

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4

5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
8 VS. ) ) DECEMBER 5, 2016  
9 ARISTA NETWORKS, INC., ) ) VOLUME 8  
10 DEFENDANT ) ) \*REDACTED\*  
11 ) ) PAGES 1589-1878  
12 )  
13

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14 TRANSCRIPT OF PROCEEDINGS  
15 BEFORE THE HONORABLE BETH LABSON FREEMAN  
16 UNITED STATES DISTRICT JUDGE

17 A P P E A R A N C E S:

18 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
19 BY: DAVID A. NELSON  
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21 CHICAGO, IL 60661

22 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
23 BY: SEAN PAK  
24 50 CALIFORNIA STREET, 22ND FLOOR  
25 SAN FRANCISCO, CALIFORNIA 94111

26 APPEARANCES CONTINUED ON NEXT PAGE

27 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
28 CERTIFICATE NUMBER 13185

29 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
30 TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONTINUED)

2 FOR THE DEFENDANT: KEKER & VAN NEST, LLP  
3 BY: ROBERT ADDY VAN NEST  
4 BRIAN FERRALL  
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6 ELIZABETH K. MCCLOSKEY  
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1 SAN JOSE, CALIFORNIA DECEMBER 5, 2016  
2 PROCEEDINGS  
08:27:18 3 (COURT CONVENED AT 8:27 A.M.)  
08:27:18 4 THE COURT: GOOD MORNING, EVERYONE. PLEASE BE  
08:27:20 5 SEATED.  
08:27:20 6 WELL, I APOLOGIZE I DON'T HAVE MUCH OF A VOICE. IT'S A  
08:27:23 7 GOOD THING I'M A LISTENER TODAY AND NOT A SPEAKER, BUT WHY  
08:27:27 8 DON'T WE GET DOWN TO WORK.  
08:27:29 9 LET ME MENTION A COUPLE OF THINGS. I AM PREPARED GIVE YOU  
08:27:34 10 RULINGS, AS BEST I CAN, ON THE KASTEN AND SATZ DEPOSITIONS.  
08:27:41 11 AND YOU'VE REDUCED THE NUMBER OF OBJECTIONS ON THE EXHIBITS.  
08:27:47 12 I HAVEN'T BEEN ABLE TO WORK WITH THEM AT ALL. SO I'M  
08:27:51 13 STARTING FROM SCRATCH. I'VE READ NO OBJECTION EXHIBITS. IT  
08:27:55 14 TAKES ME THREE OUR FOUR MINUTES TO READ EACH ONE.  
08:28:00 15 LET ME JUST MAKE A COMMENT, AND IT PERTAINS TO THE  
08:28:02 16 DEPOSITIONS AS WELL.  
08:28:04 17 NEVER IN MY WILDEST IMAGINATIONS DID I THINK WHEN YOU GAVE  
08:28:09 18 ME YOUR SUBMISSION THAT IT WOULD BE A SHOT ACROSS THE BOW TO  
08:28:13 19 THE OTHER SIDE. BUT THAT'S, IN FACT, WHAT IT HAS BEEN.  
08:28:15 20 SO IN MY EFFORT TO DEVOTE THE TIME AT NIGHT AND IN THE  
08:28:18 21 EARLY MORNING TO BE READY FOR YOU AT 8:30, WHAT I HAVE FOUND IS  
08:28:22 22 AN EXTREMELY FRUSTRATING EXERCISE IN DECIDING ISSUES THAT ARE  
08:28:27 23 NO LONGER PRESENTED TO THE COURT.  
08:28:29 24 AND SO THAT HAS NOT BEEN PRODUCTIVE. AND SO I WILL NOW BE  
08:28:36 25 GLAD TO COME AT 8:30 OR EVEN 8:15, AND YOU CAN ORALLY PRESENT

08:28:41 1 TO ME YOUR OBJECTIONS FOR THE DAY. BUT I CANNOT MANAGE DOZENS  
08:28:44 2 OF E-MAILS WITH HUNDREDS OF EXHIBITS ATTACHED TO THEM IN NO  
08:28:49 3 PARTICULAR ORDER, AND THEN RECEIVE -- THIS MORNING I CAME INTO  
08:28:58 4 THE REDUCTION IN THE EXHIBITS THAT WERE AT ISSUE, AND IT TOOK  
08:29:02 5 ME 15 MINUTES TO EVEN LOCATE IN YOUR THREE-PAGE BRIEF, WHERE  
08:29:07 6 THOSE EXHIBITS WERE LOCATED IN THE ARGUMENT, BECAUSE NOTHING IS  
08:29:13 7 IN CHRONOLOGICAL ORDER.

08:29:15 8 SO I WILL WORK WITH YOU, AND I WILL ONLY RECEIVE THE  
08:29:17 9 THINGS YOU HAVE BEEN UNABLE TO RESOLVE, AND SO THAT'S THE BEST  
08:29:23 10 I CAN DO. I WAS SURPRISED THAT EVEN THE DEPOSITION OBJECTIONS  
08:29:27 11 KEPT NARROWING. I'M ALWAYS GLAD FOR IT TO NARROW. I  
08:29:31 12 APPRECIATE THE EFFORT YOU ARE PUTTING IN. BUT I WANTED TWO  
08:29:35 13 DAYS BECAUSE THAT'S WHEN I WANTED TO START WORKING ON IT, AND  
08:29:38 14 NOW I'VE REALIZED UNTIL I SIT HERE AT 8:30 IN THE MORNING, I'M  
08:29:42 15 WASTING MY TIME.

08:29:43 16 SO WITH THAT BEING SAID, I AM PREPARED, AND IN ANY ORDER  
08:29:47 17 YOU WANT, TO GO OVER THE EXHIBITS FOR TODAY OR THE DEPOSITIONS.

08:29:51 18 IT SHOULD TAKE ME EASILY 30 MINUTES TO GET THROUGH THE  
08:29:55 19 DEPOSITION OBJECTIONS, BECAUSE I HAVE QUESTIONS. BUT I'M GLAD  
08:29:58 20 TO JUST START AT THE TOP. IT'S YOUR PREFERENCE.

08:30:04 21 MR. VAN NEST: YOUR HONOR, I THINK WITH RESPECT TO  
08:30:06 22 THIS MORNING, WE GET THE MESSAGE, I THINK EVERYBODY.

08:30:11 23 LET ME REPORT, AND MS. MCCLOSKEY CAN CORRECT ME, WE SENT  
08:30:18 24 IN THE GOURLAY DEPO LAST NIGHT BUT WE HAVEN'T GIVEN THE PAPER  
08:30:25 25 YET BECAUSE THE OBJECTIONS THERE HAVE BEEN DRAMATICALLY

08:30:27 1 NARROWED, AND WE WILL PRESENT THEM ON PAPER HOPEFULLY BY  
08:30:29 2 MID-DAY. THERE MAY BE NONE, AND THAT WILL TAKE CARE OF  
08:30:33 3 GOURLAY.  
08:30:33 4 WE WOULD LIKE TO PLAY SATZ TODAY. WE ARE NOT PLANNING TO  
08:30:37 5 PLAY KASTEN UNTIL TOMORROW OR WEDNESDAY, BUT IF YOU HAVE  
08:30:40 6 RULINGS ON SATZ --  
08:30:42 7 THE COURT: I DO.  
08:30:43 8 MR. VAN NEST: YOU CAN GIVE US THOSE.  
08:30:44 9 AND IF YOU HAVE RULINGS ON KASTENS, YOU CAN GIVE US THOSE.  
08:30:47 10 AND I THINK -- WE DON'T HAVE ANY REMAINING EXHIBIT OBJECTIONS.  
08:30:49 11 THE COURT: NO, I DON'T BELIEVE YOU DO.  
08:30:51 12 MR. VAN NEST: AND THEN WE COULD TURN TO THE  
08:30:52 13 OBJECTIONS, AND IF THEY WANT TO ARGUE THEM, THAT'S FINE,  
08:30:55 14 WHATEVER THE COURT WANTS TO DO.  
08:30:56 15 THE COURT: OKAY. AND AS YOU KNOW, I AM GLAD TO  
08:30:58 16 DEVOTE ALL DAY TO THE OBJECTIONS, THE CLOCK JUST STARTS RUNNING  
08:31:02 17 AT 9:00. I AM NOT IN ANY HURRY HERE. YOU ARE THE ONES IN A  
08:31:05 18 HURRY, AND THAT'S WHY I'VE GIVEN YOU THE 30 MINUTES EVERY DAY.  
08:31:10 19 ALL RIGHT. SO I AM MORE THAN GLAD TO START WITH THE SATZ  
08:31:16 20 DEPOSITION IF YOU WOULD LIKE ME TO. AND IT'S GOING TO BE --  
08:31:20 21 THE SATZ HAS GREATLY REDUCED TO A SINGLE PAGE, UNFORTUNATELY  
08:31:25 22 THAT WAS AFTER I HAD ALREADY WORKED THROUGH ALL OF THEM ON THE  
08:31:27 23 OTHER, BUT HERE WE ARE.  
08:31:30 24 THERE IS AN OBJECTION TO PAGE 32, LINES 3 TO 8 REGARDING  
08:31:39 25 THE SHOW COMMANDS BASED ON FOUNDATION AND LACK OF MEMORY ON THE

08:31:44 1 DOCUMENT. I'M GOING TO OVERRULE THAT OBJECTION BECAUSE I THINK  
08:31:48 2 THE WITNESS WAS ACTUALLY TESTIFYING FROM HIS OWN PERSONAL  
08:31:51 3 KNOWLEDGE, NOT FROM THE DOCUMENT ITSELF.

08:31:56 4 NOW, ONCE -- AND SO THEN AS TO THE COUNTER DESIGNATION,  
08:32:08 5 FRANKLY, I HAVE A QUESTION FOR ARISTA -- NO, ACTUALLY, THESE  
08:32:13 6 WERE CISCO'S COUNTER DESIGNATIONS.

08:32:15 7 ARE THESE COUNTER DESIGNATIONS SUPPOSED TO RELATE TO THE  
08:32:18 8 FIVE LINES THAT ARE DESIGNATED?

08:32:24 9 MS. JENKINS: SO, YOUR HONOR, I'M NOT SURE EXACTLY  
08:32:26 10 WHICH COUNTER YOU ARE TALKING ABOUT. FOR THE MOST PART, YES,  
08:32:29 11 WE HAVE ATTEMPTED TO DO THAT.

08:32:30 12 IN SOME CASES IT MAY RELATE MORE BROADLY TO SOME OF THE  
08:32:34 13 OTHER TESTIMONY, BUT WE HAVE ATTEMPTED TO CONNECT IT TO THE  
08:32:38 14 DIRECT TESTIMONY THAT IT RELATES TO.

08:32:39 15 THE COURT: HOW DO I KNOW THAT IT'S AN IMPROPER  
08:32:44 16 COUNTER IF I DON'T KNOW WHAT IT'S RELATED TO?

08:32:46 17 MS. JENKINS: SO ON THE FIRST PAGE OF THE CHART --

08:32:48 18 THE COURT: I ONLY HAVE THE REVISED CHART. NOW, WAS  
08:32:51 19 I SUPPOSED TO ALSO LOOK AT THE ONE THAT I THOUGHT WAS  
08:32:54 20 SUPERSEDED?

08:32:55 21 MS. JENKINS: WE DID NOT SUBMIT THE REVISED CHART. I  
08:32:58 22 ASSUME WHAT I HAVE IS THE REVISED CHART, AND THAT IS CORRECT.

08:33:03 23 THE COURT: I GOT A ONE-PAGE REVISED CHART,  
08:33:05 24 MS. JENKINS.

08:33:08 25 MS. JENKINS: I HAVE -- IS IT TWO-SIDED OR ONE-SIDED?

08:33:11 1 THE COURT: WELL, I HAD IT ON MY IPAD, SO THERE'S  
08:33:15 2 NOTHING TWO SIDED.

08:33:17 3 I'M SORRY, YOU DID SUBMIT TO ME A MULTIPAGE CHART OF  
08:33:22 4 OBJECTIONS, AND THEN EITHER SATURDAY OR SUNDAY, ALTHOUGH I  
08:33:31 5 DIDN'T SEE IT UNTIL THIS MORNING, I GOT WHAT WAS CALLED A  
08:33:33 6 REVISED OBJECTION, WHICH WAS A SINGLE PAGE.

08:33:37 7 SO, MS. JENKINS, YOU CERTAINLY CAN APPRECIATE HOW  
08:33:40 8 DIFFICULT THIS HAS BEEN FOR ME BECAUSE I CAN'T FIGURE OUT WHAT  
08:33:43 9 I'M SUPPOSED TO DECIDE.

08:33:45 10 MS. JENKINS: I CAN, YOUR HONOR. I APOLOGIZE. I MAY  
08:33:48 11 NOT HAVE THE SAME ONE THAT YOU HAVE BECAUSE I KNOW THAT ARISTA  
08:33:53 12 SUBMITTED THESE AND THAT THEY ARE THE ONES THAT CUT IT DOWN,  
08:33:56 13 OUR OBJECTIONS, SO I MAY BE LOOKING AT THE WRONG THING.

08:34:06 14 MR. SANTACANA: YOUR HONOR, YOU ARE CORRECT, IT WAS  
08:34:08 15 SATURDAY EVENING THAT A REVISED CHART WAS SUBMITTED. AND I  
08:34:11 16 THINK THE CHART WAS TWO PAGES, FROM WHAT I'M LOOKING AT.

08:34:14 17 THE COURT: I PRINTED THE DOCUMENT, AND IT PRINTED AS  
08:34:17 18 ONE PAGE, BUT I COULD HAVE EASILY MADE A MISTAKE.

08:34:29 19 (OFF-THE-RECORD DISCUSSION.)

08:34:35 20 THE COURT: OH, THERE IS A SECOND PAGE. WELL, MY  
08:34:38 21 MISTAKE IN PRINTING IT OUT. I HAVEN'T LOOKED AT THE REMAINDER.  
08:34:43 22 MAYBE I GOT TO THEM ON THE OTHER CHART. IT LOOKS LIKE I  
08:34:46 23 PROBABLY GOT TO MANY OF THEM, SO IT SHOULDN'T BE A PROBLEM  
08:34:50 24 BECAUSE I HAD RULED ON MUCH OF THIS.

08:34:52 25 ALL RIGHT. LET'S START WITH PAGE 1 OF THE REVISED. I'VE

08:34:56 1 GOT PAGE 2 HERE. I APOLOGIZE FOR THAT ERROR. I DON'T SEE

08:35:05 2 HOW -- I'M NOT UNDERSTANDING ON CISCO'S PART HOW ALL OF THESE

08:35:09 3 DESIGNATIONS ON PAGES 93, 96, 152, 153, 156, 161, AND 162 COULD

08:35:18 4 POSSIBLY RELATE TO THE SHOW COMMAND, MODEST AMOUNT OF TESTIMONY

08:35:25 5 THAT ARISTA HAS DESIGNATED.

08:35:27 6 AND SO I'M ASKING YOU IF -- I MEAN, ARISTA IS SAYING IT'S

08:35:33 7 AN IMPROPER COUNTER DESIGNATION, AND I NEED TO KNOW WHAT IT'S A

08:35:38 8 COUNTER TO SO THAT I CAN EVALUATE THAT.

08:35:42 9 MS. JENKINS: YOUR HONOR, WE DESIGNATED THOSE BECAUSE

08:35:44 10 IT WAS TESTIMONY TALKING ABOUT THE PROCESS OF A COMMAND

08:35:46 11 CREATION, WHICH WAS NOT SPECIFIC TO THE TESTIMONY THAT THEY

08:35:49 12 DESIGNATED, BUT WAS MORE GENERAL.

08:35:52 13 MR. PAK: YOUR HONOR, JUST IN THE INTEREST OF TIME I

08:35:54 14 THINK WE WILL WITHDRAW THOSE DESIGNATIONS THAT START WITH

08:36:00 15 PAGE 93.

08:36:00 16 THE COURT: OKAY.

08:36:01 17 MR. PAK: I THINK THE ONES THAT WE WOULD LIKE

08:36:03 18 YOUR HONOR'S RULINGS ON WOULD BE THE ONES THAT ARE RIGHT AROUND

08:36:05 19 THAT PAGE 32, THOSE ARE THE 32-9 TO 32 ---

08:36:11 20 THE COURT: WHICH ONE IS 32 -- THE NEXT ONE, YES.

08:36:15 21 SO FOR 32-9 THROUGH 35-11, I WILL OVERRULE THAT OBJECTION.

08:36:20 22 FOR 35-13 TO 35-23, I WILL OVERRULE THAT OBJECTION.

08:36:25 23 NOW, LET ME, I'M GOING TO HAVE TO COMBINE MY CHARTS -- OH,

08:36:40 24 I'M LOOKING AT KASTEN, THAT'S MY PROBLEM.

08:37:04 25 35-25 -- WELL, THIS ONE ACTUALLY I'M USING BECAUSE 35-25

08:37:09 1 WAS NOT EVEN OBJECTED TO IN THE ORIGINAL ONE, WERE YOU JUST  
08:37:12 2 ADDING SOMETHING FOR ME?  
08:37:18 3 MR. PAK: 35-25, YOUR HONOR, I THINK THE ONLY  
08:37:22 4 OBJECTION WAS THE FOUNDATION. I THINK THIS WAS IN ARISTA'S  
08:37:25 5 DESIGNATION. 35-25 WAS JUST THAT THE LACK OF MEMORY OF THE  
08:37:29 6 DOCUMENTS AT ISSUE.  
08:37:31 7 THE COURT: WELL, 35-25 WAS JUST AN ANSWER.  
08:37:37 8 MR. PAK: ALL RIGHT.  
08:37:43 9 THE COURT: AND THE ANSWER IS, YES. DO YOU SEE THE  
08:37:45 10 PAGE? THERE'S SOMETHING WRONG THERE.  
08:37:48 11 AND NOW LET ME ASK YOU TO TURN TO PAGE 17, THERE'S A  
08:37:52 12 REFERENCE ON PAGE 17 OF THE EXHIBIT TO THE INTERFACE. DO YOU  
08:37:58 13 SEE THAT?  
08:37:59 14 ANSWER: YES.  
08:38:01 15 I'M SURE YOU ARE NOT ASKING ME TO RULE ON THAT.  
08:38:03 16 MR. PAK: NO.  
08:38:04 17 THE COURT: SO I DON'T KNOW WHAT YOU WERE INTENDING  
08:38:06 18 MY TO LOOK AT.  
08:38:06 19 MR. PAK: I THINK WE WILL WITHDRAW THAT, YOUR HONOR.  
08:38:09 20 THE COURT: I BET YOU WILL. OKAY.  
08:38:15 21 ALL RIGHT. 36-5 TO 36-15, I WILL OVERRULE THAT OBJECTION.  
08:38:44 22 SO THEN WE GET TO A SERIES OF OBJECTIONS INVOLVING THE  
08:38:49 23 SNMP COMMANDS, AND ACTUALLY ALTHOUGH I TRIED TO READ AROUND THE  
08:38:54 24 DESIGNATED SECTIONS, I ACTUALLY DON'T EVEN KNOW WHAT THE  
08:38:57 25 RELEVANCE OF THE SNMP COMMANDS IS, AND SO IT DIDN'T SEEM LIKE A

08:39:04 1 PROPER DESIGNATION, BUT I REALIZED BECAUSE THERE WAS SO MUCH  
08:39:08 2 OBJECTION TO THIS, I MUST BE MISSING SOMETHING.  
08:39:10 3 SO BEFORE I SUSTAIN THE OBJECTION, I NEED TO KNOW WHAT  
08:39:15 4 RELEVANCE THERE IS TO THOSE DESIGNATIONS.  
08:39:26 5 MR. PAK: YOUR HONOR, YOU WERE TALKING ABOUT OUR  
08:39:28 6 COUNTER DESIGNATIONS STARTING ON PAGE 70?  
08:39:31 7 THE COURT: SO I'M LOOKING AT THE -- I'M LOOKING AT  
08:39:34 8 THE CHART ON PAGE 2 IN REGARD TO THIS 36, LINE 5. AND I RULED  
08:39:40 9 ON THAT. AND THEN THERE IS THE COUNTER DESIGNATION, I DON'T  
08:39:44 10 KNOW WHAT PAGES IT IS, SO I CAN'T RULE ON IT.  
08:39:48 11 MR. PAK: WITH RESPECT TO 36, LINE 5, YOUR HONOR?  
08:39:52 12 THE COURT: WELL, ON 36, LINE 5, I HAVE OVERRULED  
08:39:56 13 THAT OBJECTION, RIGHT. RIGHT.  
08:40:00 14 MR. PAK: SO, YOUR HONOR --  
08:40:01 15 THE COURT: AND THEN YOU'VE GOT AN OBJECTION TO SOME  
08:40:06 16 CATEGORY OF TESTIMONY, BUT YOU GAVE ME NOTHING TO LOOK AT.  
08:40:14 17 MR. PAK: OH, YOUR HONOR, I THINK WHERE THIS MIGHT BE  
08:40:17 18 RELATED TO WHAT WE DISCUSSED EARLIER IS THERE IS TESTIMONY THAT  
08:40:24 19 TALKS ABOUT THE STANDARDS ISSUE THAT WE HAVE BEEN DISCUSSING  
08:40:28 20 THROUGHOUT THE CASE.  
08:40:28 21 THE COURT: YES.  
08:40:29 22 MR. PAK: AND WE HAD IDENTIFIED SOME TESTIMONY THAT  
08:40:33 23 SHOWS THAT A CREATIVE PROCESS WITH MR. SATZ AS RESPONSE TO  
08:40:39 24 DESIGNATIONS TALKING ABOUT STANDARDS, THE CLI AS AN INDUSTRY  
08:40:43 25 STANDARD, AND I THINK IS ALL WRAPPED UP TOGETHER AS A

08:40:47 1 COLLECTION OF DESIGNATIONS.

08:40:49 2 THE COURT: I APPRECIATE THAT, MR. PAK. BUT IF YOU

08:40:51 3 DON'T GIVE ME LINE AND PAGE NUMBER, I HAVE NOTHING TO REVIEW.

08:40:54 4 MR. PAK: YES. SO WE ARE FINE, YOUR HONOR, WITH

08:40:57 5 WITHDRAWING ON 36. WE DO HAVE THE LINES, BUT I THINK IN THE

08:41:00 6 INTEREST OF TIME, YOUR HONOR, WE DID WITHDRAW DESIGNATIONS ON

08:41:03 7 THE PRIOR PAGE WHICH IS REFERENCED --

08:41:05 8 THE COURT: OKAY. THEN WHEN I GO TO THE NEXT

08:41:09 9 CATEGORY WHICH IS PAGE 70, LINE 7 TO 70.11, THIS IS THE

08:41:14 10 TESTIMONY ON THE SNMP COMMANDS?

08:41:17 11 MR. PAK: CORRECT.

08:41:20 12 THE COURT: I DON'T KNOW WHAT RELEVANCE THERE IS TO

08:41:22 13 ANYTHING SO YOU NEED TO DESCRIBE THAT TO ME.

08:41:24 14 MR. PAK: YOUR HONOR, I THINK THIS IS WITH RESPECT TO

08:41:27 15 THE TERM SNMP SERVER WHEN APPEARS IN SOME OF THE COMMANDS. SO

08:41:32 16 THERE'S TESTIMONY FROM BOTH SIDES THAT WE'VE DESIGNATED THAT

08:41:35 17 PERTAINS TO THE SNMP SERVER AND THE CONCEPT OF A COMMUNITY,

08:41:39 18 WHICH ARE CLAIM, WHICH ARE COMMAND TERMS THAT APPEAR THAT WERE

08:41:56 19 ASSERTED IN THIS CASE.

08:41:57 20 THAT'S THE REASON WHY I BELIEVE ARISTA HAS DESIGNATED SOME

08:42:00 21 TESTIMONY FROM PAGE 70 AND PAGE 76, AND WE ARE COUNTER

08:42:03 22 DESIGNATING WITH SOME SURROUNDING TESTIMONY.

08:42:12 23 THE COURT: OKAY. SO AS TO -- WELL, THE ORIGINAL

08:42:15 24 DESIGNATION RELATES TO SNMP HERE.

08:42:19 25 MR. PAK: CORRECT.

08:42:20 1 THE COURT: AND SO THE REMAINDER WOULD SPEAK TO THE  
08:42:22 2 FURTHER TESTIMONY OF THE WITNESS.  
08:42:23 3 MR. PAK: CORRECT.  
08:42:24 4 THE COURT: ALL RIGHT. AND THEN THE OBJECTION IS  
08:42:27 5 THAT THIS WOULD BE PREJUDICIAL, AND I DON'T KNOW WHY IT WOULD  
08:42:31 6 BE PREJUDICIAL.  
08:42:36 7 MR. PAK: THAT'S RIGHT, WE DON'T AGREE WITH ARISTA'S  
08:42:39 8 OBJECTION TO --  
08:42:40 9 THE COURT: I UNDERSTAND. SO I'M WONDERING IF --  
08:42:44 10 MR. SANTACANA, ARE YOU THE ONE ARGUING THIS? IF YOU COULD TELL  
08:42:51 11 ME ABOUT WHAT'S PREJUDICIAL TO THE COUNTER DESIGNATION.  
08:42:54 12 MR. SANTACANA: YOUR HONOR, I THINK OUR PRIMARY  
08:42:56 13 CONCERN IS THAT THE DESIGNATION JUST GOES WELL BEYOND -- THE  
08:42:58 14 COUNTER GOES WELL BEYOND THE DESIGNATED TESTIMONY.  
08:43:02 15 SO I WILL BE HONEST, I THINK MAYBE 403 WILL BE, WHAT WE  
08:43:08 16 REALLY MEANT WAS 402 AND IMPROPER COUNTER ON THIS ONE.  
08:43:12 17 THE COURT: OKAY. ALL RIGHT. THEN I WILL OVERRULE  
08:43:14 18 THE OBJECTION ON THE SNMP, AND THAT WOULD APPLY TO EVERY WHERE  
08:43:19 19 IT'S DESIGNATED.  
08:43:20 20 MR. PAK: THANK YOU, YOUR HONOR.  
08:43:31 21 THE COURT: AND THAT TAKES CARE OF IT, I THINK.  
08:43:33 22 MR. PAK: YES. GREAT. THANK YOU VERY MUCH.  
08:43:36 23 MR. VAN NEST: CAN I BE CLEAR. I'M NOT SURE WHAT'S  
08:43:39 24 BEEN WITHDRAWN. I KNOW MR. PAK REFERENCED A LOT OF THINGS THAT  
08:43:43 25 WERE WITHDRAWN.

08:43:44 1 MR. PAK: YES. I WILL STATE CLEARLY WHAT WE HAVE  
08:43:47 2 WITHDRAWN.  
08:43:48 3 WE HAVE WITHDRAWN ON PAGE 1, 93, LINE 3 TO 93, LINE 6.  
08:43:54 4 93, LINE 8 TO 94, LINE 8.  
08:43:59 5 PAGE 96, LINE 8 TO PAGE 98, LINE 4.  
08:44:04 6 PAGE 152, LINE 8 TO 152, LINE 13.  
08:44:11 7 153, LINE 16 TO PAGE 154, LINE 1.  
08:44:17 8 PAGE 156, LINE 7 TO PAGE 157, LINE 24.  
08:44:22 9 PAGE 161, LINE 19 TO PAGE 161, LINE 23.  
08:44:29 10 AND, LASTLY, 162, LINE 5 TO 162, LINE 9.  
08:44:34 11 MR. VAN NEST: THOSE HAVE BEEN WITHDRAWN. WE WILL  
08:44:37 12 CUT THE TAPE. THANK YOU, YOUR HONOR.  
08:44:38 13 MR. PAK: THANK YOU, YOUR HONOR.  
08:44:39 14 THE COURT: ALL RIGHT. WOULD YOU LIKE TO GO ON TO  
08:44:40 15 THE KASTEN DEPOSITION?  
08:44:42 16 MR. VAN NEST: WE DON'T PLAN TO PLAY KASTEN TODAY,  
08:44:45 17 BUT IF YOU ARE READY --  
08:44:46 18 THE COURT: IT'S YOUR CHOICE AS TO HOW WE CAN SPEND  
08:44:49 19 YOUR TIME THIS MORNING.  
08:44:50 20 MR. VAN NEST: I THINK THAT'S FINE. LET'S DO KASTEN,  
08:44:52 21 THAT WOULD BE GREAT.  
08:44:53 22 THE COURT: LET'S DO KASTEN. OKAY. ALL RIGHT.  
08:44:57 23 I HAVE THE REVISED SHEET, WHICH ACTUALLY THIS ONE IS ABOUT  
08:45:00 24 SIX PAGES LONG.  
08:45:01 25 MS. MCCLOSKEY, ARE YOU HANDLING THIS ONE?

08:45:09 1 SO I HAVE TO START WITH A REQUEST BECAUSE IT'S THREADED

08:45:18 2 THROUGHOUT HERE. WHEN YOU TURN TO PAGE 81, LINE 2 -- AND THIS

08:45:23 3 HAS TO DO WITH THE JUNOS, I GUESS IT'S THE JUNOS SE, I'M NOT

08:45:27 4 SURE WHETHER IT'S JUNOS E, I DON'T KNOW HOW THEY SAY IT.

08:45:32 5 I HAVE NO IDEA WHAT THAT'S TALKING ABOUT OR WHY THAT WOULD

08:45:35 6 BE RELEVANT. SO I JUST COULDN'T -- I JUST COULDN'T PICK UP

08:45:40 7 WHAT THIS WAS ABOUT --

08:45:42 8 MR. VAN NEST: WHICH PAGE, YOUR HONOR?

08:45:43 9 THE COURT: SO I'M ON PAGE 81. WHEN I LOOK AT THE

08:45:46 10 VERY FIRST OBJECTION, IS AN ARISTA OBJECTION, AND YOU'RE

08:45:50 11 OBJECTING AT PAGE 81-22 TO 82-10 AND AGAIN 82-13. I DON'T

08:45:58 12 ACTUALLY UNDERSTAND WHAT THIS IS EVEN ABOUT, AND MAYBE THAT'S

08:46:03 13 PART OF YOUR POINT THERE, AND MAYBE CISCO HAS TO TELL ME WHY

08:46:07 14 THEY DESIGNATED IT BECAUSE I DON'T UNDERSTAND.

08:46:12 15 MR. VAN NEST: THAT'S OUR OBJECTION TO THEIR COUNTER,

08:46:14 16 THAT'S RIGHT.

08:46:16 17 THE COURT: YEAH. SO, MR. PAK, IT MUST BE IMPORTANT.

08:46:19 18 YOU MUST REALLY WANT IT OR THEY MUST REALLY WANT TO KEEP IT

08:46:22 19 OUT, BUT IT WENT OVER MY READ.

08:46:23 20 MR. PAK: YOUR HONOR, I BELIEVE THIS HAS TO DO WITH

08:46:27 21 JUST ASSESSING CONTENTS. THERE ARE TWO LINE OF PRODUCTS AT

08:46:31 22 JUNIPER THAT WE HAVE BEEN DISCUSSING IN THIS CASE, AND WE WILL

08:46:35 23 HAVE MR. SHAFER TALK ABOUT ONE OF THOSE PRODUCTS, THAT'S THE

08:46:38 24 JUNOS AND THEN THERE'S JUNOS E.

08:46:42 25 THE COURT: OKAY.

08:46:42 1 MR. PAK: MR. SHAFER, WHO WILL TESTIFY LIVE TOMORROW,

08:46:46 2 WILL TALK ABOUT JUNOS. AND MR. KASTEN WAS PRIMARILY DESIGNATED

08:46:49 3 DURING HIS DEPOSITION TO TALK ABOUT JUNOS E.

08:46:52 4 THE COURT: OKAY.

08:46:52 5 MR. PAK: SO JUNOS SE IS THE PRIMARY OPERATING SYSTEM

08:46:57 6 THAT JUNOS CONTINUES TO MAKE THAT RUNS ON ALL OF THEIR

08:47:02 7 PRODUCTS.

08:47:02 8 JUNOS E, BASED UPON THE TESTIMONY OF MR. KASTEN AND THE

08:47:07 9 DOCUMENTS WE HAVE SEEN, IS AN OPERATING SYSTEM THAT JUNIPER

08:47:10 10 ACQUIRED FROM A THIRD PARTY. IT'S BEEN DISCONTINUED.

08:47:14 11 SO THAT'S THE OPERATING SYSTEM THAT DR. BLACK ANALYZED,

08:47:16 12 BUT DR. BLACK DID NOT ANALYZE JUNOS, WHICH IS THE PRIMARY

08:47:21 13 OPERATING SYSTEM.

08:47:22 14 SO MANY OF THESE COUNTERS ARE DESIGNED TO ELICIT THE FACT

08:47:28 15 THAT JUNOS SE IS NO LONGER IN OPERATION AND THAT THIS IS NOT

08:47:33 16 THE SAME AS JUNOS, AND, THEREFORE, FROM A CUSTOM USAGE OR FAIR

08:47:39 17 USE PERSPECTIVE, THAT THE RIGHT, FROM CISCO'S PERSPECTIVE, THE

08:47:43 18 PROPER OPERATING SYSTEM TO FOCUS ON FROM JUNIPER IS JUNOS.

08:47:48 19 THAT'S REALLY WHAT WE ARE TRYING TO GET AT WITH MANY OF THESE

08:47:54 20 DEPOSITIONS.

08:47:54 21 THE COURT: THAT WAS BEYOND WHAT I COULD PUT

08:47:56 22 TOGETHER.

08:47:57 23 MR. PAK: IT'S HARD TO PIECE THAT TOGETHER, AND

08:47:58 24 THAT'S THE REASON WHY YOU ARE SEEING THAT.

08:48:01 25 MR. SANTACANA: SO YOUR HONOR IS -- I UNDERSTAND WHY

08:48:03 1 MR. PAK WANTS TO ELICIT THAT TESTIMONY IN HIS DEPOSITION. THE  
08:48:07 2 REASON WE COUNTERED -- I'M SORRY, OBJECTED ED TO ONLY THESE  
08:48:10 3 COUNTERS IS BECAUSE THESE ARE THE ONLY COUNTERS WE THINK ARE  
08:48:13 4 CLEARLY OUTSIDE THE SCOPE OF WHAT WE DESIGNATED.

08:48:16 5 SO IF WE LOOK AT WHAT WE HAVE ON PAGE 21, THIS QUESTION OF  
08:48:20 6 WHETHER JUNOS E IS OR IS NOT SOLD IS JUST SORT OF A SEPARATE  
08:48:23 7 QUESTION. AND, OF COURSE, CISCO WAS FREE TO DESIGNATE PARTS OF  
08:48:27 8 THIS DEPOSITION IF THEY WANTED IT, BUT THEY DIDN'T DO THAT, AND  
08:48:30 9 WE THINK INSTEAD TRIED TO COUNTER IN WHAT THEY WANT,  
08:48:35 10 ESSENTIALLY.

08:48:39 11 MR. PAK: YOUR HONOR, WE DON'T BELIEVE THAT'S TRUE.

08:48:41 12 THE COURT: SO THAT'S WHO JUNIPER PURCHASED, ACQUIRED  
08:48:45 13 IT THROUGH, THAT'S THE --

08:48:46 14 MR. PAK: THAT'S RIGHT, YOUR HONOR.

08:48:49 15 AND, AGAIN, FROM OUR PERSPECTIVE, WE DON'T THINK THAT  
08:48:52 16 JUNOS SE IS REALLY RELEVANT TO THE CASE IN THE SENSE THAT IT'S  
08:48:56 17 A DISCONTINUED PRODUCT.

08:48:57 18 BUT TO THE EXTENT THAT THEY ARE OFFERING MR. KASTEN'S  
08:48:59 19 TESTIMONY TO TALK ABOUT THIS DISCONTINUED PRODUCT, WE WOULD  
08:49:03 20 LIKE TO SET THE RIGHT FACTUAL FRAMEWORK.

08:49:05 21 THE COURT: SO I COULDN'T TELL FROM THE -- SEE, SO  
08:49:08 22 MAYBE I TOOK TOO NARROW A VIEW, BUT WHEN I SAW ARISTA'S  
08:49:12 23 DESIGNATION OF PAGE 21, LINE 3 TO 15, I PRESUMED THAT THE  
08:49:16 24 COUNTER DESIGNATION RELATED TO THE SCOPE OF THE INITIAL  
08:49:19 25 DESIGNATION. AND NOWHERE IN THIS PAGE 21, 3 TO 15, IS JUNOS E

08:49:28 1 MENTIONED. SO IT LOOKS LIKE IT WAS OUTSIDE THE SCOPE.

08:49:31 2 MR. PAK: RIGHT. AND YOU COULD SEE THAT THIS SET OF

08:49:34 3 DESIGNATIONS ON THE DISCONTINUATION OF THE PRODUCT CUTS ACROSS

08:49:39 4 SOME OF OUR OTHER COUNTER DESIGNATIONS.

08:49:42 5 SO REALLY THE ISSUE IS, YOU KNOW, IT'S FINE IF ARISTA

08:49:46 6 WANTS TO BRING IN SOME TESTIMONY AROUND THIS DISCONTINUED

08:49:49 7 PRODUCT, WE JUST WANT TO GET THE FACTS IN FRONT OF THE JURY

08:49:53 8 THAT JUNO E HAS BEEN END OF LIFE, AND THAT --

08:49:59 9 THE COURT: HAS ALREADY TERMINATED?

08:50:01 10 MR. PAK: HAS ALREADY BEEN TERMINATED, IT'S NO LONGER

08:50:04 11 IN USE.

08:50:04 12 THE COURT: AND WHAT YEAR WAS IT TERMINATED? I

08:50:07 13 BELIEVE IT WAS TERMINATED A FEW YEARS AGO, BUT THE TESTIMONY

08:50:10 14 THAT WE HAVE IS AT THE BOTTOM OF PAGE 81, I WOULD IMAGINE

08:50:17 15 THAT'S TRUE, AND IF YOU GO ON, THAT THE CURRENT JUNIPER'S

08:50:26 16 STRATEGIC CURRENT AND FUTURE IS ABOUT JUNOS AND NOT JUNOS SE.

08:50:32 17 THERE IS NO YEAR THERE.

08:50:34 18 MR. PAK: I DON'T THINK IT'S A SPECIFIC YEAR. IT

08:50:37 19 MIGHT BE A FACT THAT WE CAN ELICIT FROM MR. SHAFER, WHO WILL

08:50:41 20 TESTIFY TOMORROW, BUT MR. KASTEN'S ROLE AT JUNIPER WAS TO WORK

08:50:45 21 WITH THIS THIRD PARTY PRODUCT THAT'S BEEN DISCONTINUED.

08:50:48 22 THE COURT: I THINK YOU ARE GOING TO HAVE TO ACTUALLY

08:50:51 23 ESTABLISH THAT ELSEWHERE. I DON'T THINK THAT ESTABLISHES THAT

08:50:54 24 DURING THE RELEVANT TIMEFRAME JUNOS SE WAS ESTAMPED. AND SO I

08:50:59 25 JUST DON'T THINK IT'S DOING WHAT YOU THINK IT WAS DOING.

08:51:02 1 ALL RIGHT. I'M GOING TO SUSTAIN THE OBJECTIONS TO

08:51:07 2 81-LINE 22 TO 82, LINE 10, AND PAGE 82, LINE 13 TO 83, 13.

08:51:16 3 I'M GOING TO OVERRULE ALL OF THE OBJECTIONS ON 83, LINE 14

08:51:22 4 TO 83, LINE 16, AND 83, LINE 18 TO 84, LINE 10, THOSE ARE

08:51:29 5 OVERRULED.

08:51:29 6 NOW, WHEN I GO BACK INTO THE CISCO OBJECTION COLUMN ON

08:51:34 7 PAGE 25, LINE 18, I'M GOING TO OVERRULE THAT OBJECTION,

08:51:40 8 ALTHOUGH THE WITNESS DID NOT SHOW PERSONAL KNOWLEDGE OF THE

08:51:43 9 DOCUMENT, HIS TESTIMONY RELATED TO THINGS HE CLEARLY RECALLED.

08:51:50 10 THEN LET'S SEE, PAGE 33, LINE 24 TO 34, LINE 4. I'M GOING

08:51:59 11 TO SUSTAIN FOR LACK OF FOUNDATION. PAGE 35, LINE 15 -- I'M

08:52:10 12 SORRY. PAGE 34, LINE 15 TO 34, LINE 19, I'M GOING TO OVERRULE

08:52:17 13 THAT OBJECTION.

08:52:19 14 PAGE 39, LINE 1 TO 39, LINE 9, I'M GOING TO SUSTAIN THE

08:52:26 15 OBJECTION. IT DOES APPEAR TO BE SPECULATION REGARDING THE

08:52:32 16 OVERLAP BETWEEN JUNOS AND CISCO.

08:52:35 17 AS TO THE COUNTER DESIGNATIONS, I DIDN'T ACTUALLY SEE HOW

08:52:40 18 THIS RELATED AGAIN. SO ONE OF THE OBJECTION WAS THAT IT WAS

08:52:44 19 OUTSIDE THE SCOPE OF THE DESIGNATION, AND I WAS SYMPATHETIC TO

08:52:49 20 THAT BECAUSE I DIDN'T SEE HOW IT RELATED.

08:52:52 21 MR. PAK, CAN YOU INFORM ME, THIS IS --

08:52:56 22 MR. PAK: SURE, YOUR HONOR. I THINK THAT, AGAIN,

08:52:58 23 THIS GOES TO THE -- NOW, IT MIGHT BE MOOT BECAUSE AS I

08:53:02 24 UNDERSTAND IT, YOUR HONOR IS SUSTAINING THE OBJECTION TO

08:53:05 25 PAGE 39 WHICH TALKS ABOUT COPYING.

08:53:07 1 THE COURT: RIGHT.

08:53:08 2 MR. PAK: SO IF YOU PICK UP ON THE DESIGNATIONS THAT

08:53:10 3 WE HAD AT PAGE 74, LINE 23, WE -- WE HAD SOME COUNTER

08:53:17 4 DESIGNATIONS TALKING ABOUT THE WORDS "COPYING" AND

08:53:20 5 "CISCO-LIKE."

08:53:20 6 THE COURT: RIGHT.

08:53:21 7 MR. PAK: AND SOME OF THAT TESTIMONY WAS TO REALLY

08:53:23 8 SET THE --

08:53:24 9 THE COURT: RIGHT. SO IF I TAKE OUT THE INITIAL

08:53:25 10 DESIGNATION TO ALL THE -- DOES THE OBJECTION GO AWAY ON THE

08:53:29 11 COUNTERS?

08:53:30 12 MR. PAK: YES. AND THE COUNTERS AS WELL I THINK WE

08:53:34 13 CAN WITHDRAW THE COUNTERS.

08:53:35 14 MR. VAN NEST: WHICH COUNTERS ARE BEING WITHDRAWN?

08:53:37 15 MR. PAK: YES, SO LET ME MAKE CLEAR.

08:53:40 16 AS I UNDERSTAND YOUR HONOR'S RULING YOU ARE SUSTAINING THE

08:53:42 17 OBJECTIONS TO PAGE 39, LINE 1 TO PAGE 39, LINE 9.

08:53:45 18 THE COURT: CORRECT.

08:53:46 19 MR. PAK: AS A RESULT, WE ARE WITHDRAWING OUR COUNTER

08:53:49 20 TO -- AT PAGE 74, LINE 23 TO PAGE 77, LINE 6.

08:53:56 21 PAGE 77, LINE 10 TO PAGE 77, LINE 13.

08:54:00 22 AND, FINALLY, PAGE 77, LINE 21 TO PAGE 78, LINE 3.

08:54:07 23 MR. VAN NEST: LINE WHAT?

08:54:08 24 MR. PAK: LINE 3.

08:54:09 25 THE COURT: OKAY.

08:54:11 1 THEN THE NEXT OBJECTION IS PAGE 39, LINE 12 TO 40, LINE 8.

08:54:17 2 I WILL SUSTAIN THAT OBJECTION AS THE WITNESS SHOWED NO PERSONAL

08:54:22 3 KNOWLEDGE, AND I PRESUME THAT WILL CAUSE THE OBJECTION TO THE

08:54:27 4 COUNTER DESIGNATIONS TO BE WITHDRAWN?

08:54:29 5 MR. PAK: THAT'S CORRECT, YOUR HONOR.

08:54:31 6 MR. VAN NEST: WHICH ONES?

08:54:32 7 MR. PAK: AND, AGAIN, IT'S JUST THE SAME THREE THAT I

08:54:35 8 HAD STATED FOR PAGE 39, CROSS-REFERENCED.

08:54:39 9 THE COURT: THE NEXT OBJECTION IS PAGE 43, LINE 3 TO

08:54:42 10 43, LINE 17. I WILL SUSTAIN THAT OBJECTION.

08:54:45 11 ALSO LACK OF PERSONAL KNOWLEDGE, AND, THEREFORE, I PRESUME

08:54:48 12 THAT THE COUNTER DESIGNATION WILL BE WITHDRAWN.

08:54:51 13 MR. PAK: YES, YOUR HONOR.

08:55:01 14 THE COURT: WELL, NOW WE HAVE TO ACTUALLY -- NOW YOU

08:55:04 15 HAVE A COUNTER DESIGNATION TO ONE THAT WAS NOT OBJECTED TO,

08:55:07 16 PAGE 44, LINE 10 TO 44, 13. LET ME JUST OPEN THAT UP.

08:55:40 17 AND THIS WAS THE PRIMARY DESIGNATION, IT HAD TO DO WITH

08:55:46 18 WHETHER JUNIPER ASKED CISCO FOR PERMISSION TO COPY, OR TO USE

08:55:53 19 CLI COMMANDS, AND I DIDN'T UNDERSTAND HOW THESE COUNTER

08:55:56 20 DESIGNATIONS RELATED, MR. PAK.

08:55:58 21 MR. PAK: YES, LET ME -- SO I THINK WE ARE TALKING

08:56:00 22 ABOUT PAGE 44, STARTING AT LINE 10.

08:56:03 23 THE COURT: CORRECT.

08:56:04 24 MR. PAK: AND THEN OUR DESIGNATIONS WERE TO --

08:56:08 25 THE COURT: WELL, THESE ARE THE ONES THAT YOU HAVE

08:56:10 1 BEEN WITHDRAWING, SO NOW WE'VE GOT TO DECIDE IT.

08:56:13 2 MR. PAK: SO, YOUR HONOR, I THINK WE ARE HAPPY TO

08:56:15 3 WITHDRAW THOSE AS WELL.

08:56:16 4 THE COURT: OKAY.

08:56:19 5 MR. VAN NEST: SAME ONES?

08:56:21 6 THE COURT: YES.

08:56:22 7 MR. VAN NEST: OR SAME COUNTERS THAT YOU HAVE BEEN

08:56:24 8 WITHDRAWING?

08:56:25 9 MR. PAK: LET ME JUST TAKE ONE MORE LOOK HERE.

08:56:28 10 THE COURT: ALL RIGHT. NOW, THE NEXT SERIES, AND

08:56:32 11 ACTUALLY THE FINAL THREE PRIMARY OBJECTIONS, I HAD REAL

08:56:39 12 CONCERNS ABOUT THE LAY OPINION PROBLEM IMBEDDED IN THE

08:56:42 13 WITNESS'S TESTIMONY BECAUSE I CAN'T TELL WHAT LEVEL OF PERSONAL

08:56:49 14 KNOWLEDGE THIS WITNESS HAS REGARDING HOW STANDARD THESE MODES

08:56:55 15 WERE INVOLVING -- WELL, THEY ARE ALL OF THE MODES AT ISSUE IN

08:57:00 16 THE CASE, ESSENTIALLY. I JUST COULDN'T -- I DIDN'T SEE IT.

08:57:08 17 SO YOU HAVE TO HELP ME OUT. AND IT WAS OBVIOUSLY IN THE

08:57:14 18 BACKGROUND TESTIMONY HE GAVE, I SUPPOSE, BUT IT WASN'T RIGHT

08:57:17 19 AROUND THE DESIGNATED PORTIONS, SO I COULDN'T FIND IT.

08:57:21 20 MR. SANTACANA: YES, YOUR HONOR. AND MR. KASTEN

08:57:25 21 WORKS WITH JUNOS E, SO HIS TESTIMONY ABOUT WHICH COMMAND MODES

08:57:29 22 ARE IN THE JUNIPER SOFTWARE, I THINK THERE'S A CLEAR FOUNDATION

08:57:33 23 FOR THAT.

08:57:33 24 SO IS THAT YOUR QUESTION OR ARE YOU ASKING MORE ABOUT --

08:57:36 25 THE COURT: WELL, IN ORDER FOR HIM TO GIVE A -- HE'S

08:57:40 1 IN A POSITION THAT IT'S NOT UNREASONABLE THAT HE COULD PROPERLY  
08:57:46 2 GIVE A LAY OPINION, THAT'S NOT REALLY A PROBLEM SO I JUST HAVE  
08:57:49 3 TO BE SATISFIED THAT HE'S PERSON, AND I JUST COULDN'T FIND  
08:57:52 4 THAT.

08:57:52 5 SO THAT'S THE NATURE OF THE OBJECTION, AND I JUST WANT TO  
08:57:55 6 BE SATISFIED THAT IT'S APPROPRIATE BECAUSE HE MAKES SOME PRETTY  
08:57:57 7 BROAD STATEMENTS.

08:57:58 8 MR. VAN NEST: YOUR HONOR, EARLY ON IN THIS  
08:58:00 9 DESIGNATION THIS WAS THE GUY THAT WORKED WITH ALL OF THIS SAME  
08:58:03 10 SET OF STUFF THROUGH THREE COMPANIES.

08:58:05 11 THE COURT: YEAH.

08:58:05 12 MR. VAN NEST: I MEAN, HE WAS STARTING WITH, I THINK  
08:58:07 13 THE FIRST ONE WAS REDBACK OR ONE OF THOSE, THEN THAT'S  
08:58:11 14 ACQUIRED, AND HE CONTINUES SELLING THE SAME PRODUCT.

08:58:15 15 THEN HE'S ACQUIRED AGAIN BY JUNIPER, AND THEY KEEP SELLING  
08:58:19 16 THE SAME PRODUCT, AND HE TESTIFIES ABOUT THE FACT THAT HE'S THE  
08:58:21 17 ONE RESPONSIBLE FOR KNOWLEDGE ABOUT HOW THESE PRODUCTS ARE  
08:58:24 18 CREATED.

08:58:25 19 THE COURT: SURE.

08:58:25 20 MR. VAN NEST: HE TALKED ABOUT HOW THEY GO ABOUT  
08:58:27 21 SELECTING COMMANDS AND SO ON AND HE TALKS ABOUT  
08:58:31 22 INTEROPERABILITY AND ALL OF THAT IS COMING IN.

08:58:33 23 AND ALL OF THIS IS CLOSELY RELATED ONCE YOU HAVE A SET OF  
08:58:38 24 COMMANDS, RIGHT? YOU HAVE TO DECIDE, YOU HAVE ONE MODE OR YOU  
08:58:41 25 HAVE TWO MODES.

08:58:42 1 THIS IS THE GUY OUT THERE WITH THE PRODUCT SELLING IT. HE  
08:58:45 2 CLEARLY HAS A BASIS OF FOUNDATION FOR ALL OF THIS. BUT, OF  
08:58:49 3 COURSE, THAT'S ESTABLISHED EARLIER IN THE DEPOSITION AND NOT  
08:58:51 4 RIGHT HERE. WE ARE GOING ON --  
08:58:53 5 THE COURT: THAT'S WHY I'M ASKING YOU TO FILL IT IN  
08:58:55 6 FOR ME.  
08:58:56 7 MR. VAN NEST: THIS GUY, AMONG THE PEOPLE THAT ARE  
08:58:58 8 DESIGNATED, THIS GUY IS THE GUY WITH THE LONGEST HISTORY OF  
08:59:02 9 JUST ABOUT ANYBODY WITH A SINGLE PRODUCT THROUGH TWO OR THREE  
08:59:04 10 COMPANIES.  
08:59:05 11 THE COURT: RIGHT.  
08:59:06 12 MR. VAN NEST: AND SELLING IT, DEVELOPING IT, HOW  
08:59:08 13 THEY DID IT.  
08:59:08 14 SO THE MODES, I RECOGNIZE I DISCUSSED LATER ON, BUT  
08:59:11 15 OBVIOUSLY --  
08:59:12 16 THE COURT: SO HERE'S MY CONCERN --  
08:59:13 17 MR. VAN NEST: HE'S THE PERSON.  
08:59:15 18 THE COURT: -- AT PAGE 83, HE GIVES THIS TESTIMONY  
08:59:18 19 ABOUT INDUSTRY STANDARDS IS A VAGUE TERM, WITHOUT ANY  
08:59:24 20 BOUNDARIES TO IT, WHICH, OF COURSE, HAS BEEN A PROBLEM I'VE HAD  
08:59:27 21 IN THIS LITIGATION AS WELL.  
08:59:29 22 MR. PAK: YES.  
08:59:29 23 THE COURT: AND SO THAT'S WHERE I GOT TO BE CONCERNED  
08:59:34 24 ABOUT HIS TESTIMONY.  
08:59:37 25 MR. VAN NEST: THAT'S THEIR COUNTER, YOUR HONOR,

08:59:39 1 THAT'S NOT SOMETHING --

08:59:40 2 THE COURT: NO, BUT I HAVE TO FIND A FOUNDATION FOR

08:59:43 3 THIS WITNESS'S TESTIMONY. AND SO I HAVE TO LOOK AT THE OTHER

08:59:45 4 THINGS HE SAID TO DETERMINE WHETHER HE ACTUALLY CAN GIVE A LAY

08:59:50 5 OPINION. AND IT'S -- I DON'T WANT TO TAKE A RESTRICTIVE VIEW

08:59:54 6 ON THE SCOPE OF LAY OPINION FOR PEOPLE LIKE THIS WHO BASICALLY

08:59:57 7 INVENTED THE WHOLE THING. BUT I JUST NEED TO SEE IT.

09:00:01 8 AND SO, YES, THIS IS A COUNTER DESIGNATION TO OTHER

09:00:04 9 THINGS, BUT I HAD READ, AND, THEREFORE, SHOULDN'T HAVE TO

09:00:07 10 IGNORE THE FACT THAT HE TESTIFIES THAT INDUSTRY STANDARD IS A

09:00:13 11 VAGUE TERM SINCE IT DOESN'T MEAN SOMETHING SPECIFIC. THERE CAN

09:00:17 12 BE MORE THAN ONE, BY MANY, I SHOULD HAVE PERHAPS, IF I SAID

09:00:20 13 MANY, I MEAN MORE THAN ONE. IT'S VAGUE. IT'S A VAGUE TERM.

09:00:24 14 SO I THINK THAT'S REALLY HONEST AND CANDID, OF COURSE IT

09:00:27 15 IS, BECAUSE HE'S TALKING ABOUT THE BROADER SCOPE OF INDUSTRY

09:00:32 16 STANDARD, MORE LIKE WHAT YOU INITIALLY CALLED OR DR. BLACK

09:00:35 17 CALLED THE DE FACTO STANDARD. IT'S WHAT PEOPLE IN THE INDUSTRY

09:00:43 18 COMMONLY UNDERSTOOD WAS OUT THERE. AND SO IT'S IN THE PUBLIC

09:00:47 19 DOMAIN, IT WOULD BE MORE, MAYBE --

09:00:50 20 MR. VAN NEST: THAT'S WHAT THIS IS ABOUT. I MEAN,

09:00:52 21 HE'S -- WE ARE NOT OFFERING HIM FOR ANYTHING ELSE. THEY'VE

09:00:55 22 COUNTERED THIS, FINE. I MEAN, IT GIVES CONTEXT TO THE

09:00:58 23 TESTIMONY.

09:00:59 24 BUT, AGAIN, THIS IS A PERSON OUT THERE NOT ONLY DEVELOPING

09:01:03 25 THE PRODUCT BUT SELLING IT AND OUT IN THE MARKET AND

09:01:06 1 UNDERSTANDING WHERE THEY GET THESE COMMANDS AND HOW THEY GET  
09:01:10 2 THEM.

09:01:11 3 AND I JUST DON'T SEE ANY DIFFERENCE IN HIS OPINIONS ABOUT  
09:01:13 4 THE MODES THAN HIS STATEMENTS ABOUT HOW THEY DESIGNED THE  
09:01:16 5 COMMANDS THEMSELVES, THAT'S ALL -- THAT'S WHY I THINK THERE'S  
09:01:21 6 PLENTY OF FOUNDATION FOR IT.

09:01:23 7 THE COURT: OKAY.

09:01:24 8 MR. PAK: I THINK THERE ARE TWO ISSUES GOING ON AND  
09:01:25 9 THIS IS REFLECTED I THINK IN OUR RESPONSE. THERE'S SPECIFIC  
09:01:29 10 QUESTIONS IN ARISTA'S DESIGNATIONS THAT GO TO, DID JUNOS E HAVE  
09:01:34 11 THESE MODES AND PROMPTS? AND CLEARLY THERE'S FOUNDATION LAID  
09:01:37 12 FOR THAT. HE DID WORK WITH THIS PRODUCT ACROSS DIFFERENT  
09:01:40 13 COMPANIES.

09:01:41 14 WHERE WE HAVE SOME ISSUES, THOUGH, IS EXACTLY THE TYPES OF  
09:01:44 15 QUESTIONS THAT YOUR HONOR IS SEEING WHERE THEY THEN TRANSITION  
09:01:47 16 TO QUESTIONS ABOUT IS THIS TYPICAL IN THE INDUSTRY? IS THIS  
09:01:50 17 INDUSTRY STANDARD?

09:01:50 18 AND REALLY, I DON'T SEE A FOUNDATION WHERE HE'S DONE AN  
09:01:53 19 ANALYSIS OF OTHER VENDORS'S COMMANDS OR MODES AND PROMPTS, AND  
09:01:58 20 HE ADMITS THAT INDUSTRY STANDARD COULD HAVE MULTIPLE MEANING.  
09:02:03 21 WE HAD LOTS OF INTERPRETATIONS OF THAT MEANING IN THE TRIAL.

09:02:08 22 WE DON'T HAVE OBJECTIONS. FOR EXAMPLE, ON PAGE 63,  
09:02:12 23 LINE 20 WHICH THE QUESTION WAS, "DOES JUNOS E SUPPORT AN  
09:02:16 24 INTERFACE CONFIGURATION MODE?

09:02:17 25 ANSWER: YES, IT DOES."

09:02:19 1 THAT'S FINE. HE HAS FOUNDATION FOR THAT.

09:02:21 2 BUT WHERE WE GET INTO THE NEXT ONE IS, "AND THE INTERFACE

09:02:27 3 CONFIGURATION MODE, ONE THAT'S STANDARD IN THE INDUSTRY,"

09:02:32 4 THAT'S WHERE WE START TO GET INTO --

09:02:34 5 THE COURT: THAT'S WHERE I DON'T SEE THE FOUNDATION.

09:02:38 6 I NORMALLY EXPECT AN EXPERT TO TESTIFY ON THAT, BUT HERE'S

09:02:41 7 SOMEONE -- I JUST DON'T SEE THE FOUNDATION FOR HIM SAYING I

09:02:44 8 KNOW WHAT THE INDUSTRY STANDARDS ARE.

09:02:46 9 MR. VAN NEST: WHAT HE SAYS, YOUR HONOR, IS THAT IN

09:02:48 10 DESIGNING COMMANDS, THEY GO TO BOOKS, THEY GO TO REFERENCES,

09:02:53 11 THEY FIND THESE THINGS IN BOOKS, THEY ARE CISCO COMMANDS, BUT

09:02:57 12 THEY ARE PUBLISHED BY OTHERS. THIS IS ALL A PART OF DEVELOPING

09:03:01 13 THE COMMANDS IN THE RELATED MODES AND PROMPTS.

09:03:05 14 SO, YEAH, HE SAYS IT'S SORT OF A VAGUE TERM, BUT REMEMBER

09:03:08 15 WE'VE GOT WILFULNESS AT ISSUE, WE'VE GOT GOOD FAITH AT ISSUE,

09:03:12 16 OUR WITNESSES.

09:03:13 17 THE COURT: WE DON'T HAVE WILFULNESS AT ISSUE.

09:03:15 18 MR. VAN NEST: WELL, WE HAVE GOOD FAITH, BAD FAITH AT

09:03:18 19 ISSUE, AND OUR WITNESSES HAVE ALL SAID AND THE ONES THAT HAVE

09:03:22 20 TESTIFIED SO FAR THAT WE THOUGHT THESE WERE FAIR TO USE AND

09:03:25 21 FREE TO USE AND WERE OUT THERE BEING PROMOTED AS STANDARDS, AND

09:03:32 22 HERE'S SOMEONE ELSE WHO ALSO BELIEVES THESE ARE FAIR TO USE

09:03:37 23 BECAUSE THEY'RE OUT THERE AND ARE GENERALLY STANDARD.

09:03:40 24 THEY HAVE DESIGNATED TESTIMONY TO IMPEACH WHATEVER

09:03:42 25 QUALIFICATIONS HE HAS, BUT THERE'S PLENTY OF FOUNDATION FOR

09:03:45 1 THIS WITNESS AS THE PERSON WHO WAS INVOLVED DESIGNING THE  
09:03:49 2 SYSTEM THROUGH THREE DIFFERENT COMPANIES AND FIGURING OUT WHERE  
09:03:52 3 TO GET THE COMMANDS THAT HE'S GOING TO USE. IT'S ALL PART AND  
09:03:55 4 PARCEL OF THAT.

09:03:56 5 SO I THINK THIS IS ALL FOR THE JURY'S CONSIDERATION. WE  
09:03:59 6 ARE NOT OFFERING HIM AS AN EXPERT, HE'S A LAY WITNESS. AND  
09:04:02 7 HE'S MAYBE MORE AUTHENTIC BECAUSE HE'S OUT THERE IN THE FIELD  
09:04:06 8 DOING THE WORK.

09:04:07 9 THE COURT: SO I GUESS HERE'S MY CONCERN IS THAT --  
09:04:12 10 MY REAL CONCERN IS THE, THE DESIGNATION STARTS AT LINE 13 ON  
09:04:17 11 PAGE 62, BUT THE QUESTION IS WHAT SHAPES IT. IT'S A VERY BROAD  
09:04:21 12 QUESTION. ARE THERE CERTAIN COMMAND MODES THAT ARE STANDARD IN  
09:04:25 13 THE INDUSTRY?

09:04:25 14 THAT'S BROAD.

09:04:31 15 NOW, TO THE EXTENT THE WITNESS IS DESCRIBING JUNIPER'S  
09:04:34 16 PROCESS OR THESE PREDECESSOR'S COMPANY'S PROCESS OF LOOKING IN  
09:04:41 17 BOOKS, LOOKING AND CREATING THINGS TO PICK UP PRE-EXISTING  
09:04:44 18 PUBLIC DOMAIN ASPECTS, THAT'S FINE. HE'S ACTUALLY NOT TALKING  
09:04:47 19 ABOUT WHAT HE DESIGNED AT JUNIPER OR REDSTONE OR THE OTHER  
09:04:52 20 PREDECESSORS.

09:04:53 21 THIS IS A VERY BIG STATEMENT, AND THAT'S WHY I THINK IT'S  
09:04:56 22 BEYOND THE SCOPE OF LAY OPINION.

09:04:57 23 NOW, WE CAN GO ON TO THE OTHER ONES, SO THAT'S 13 TO 19.  
09:05:02 24 AND THEN WE GO ON TO 63-5. AND THE QUESTION IS, AND IS THAT --  
09:05:09 25 IS THE GLOBAL CONFIGURATION MODE ONE THAT'S TYPICAL IN THE

09:05:13 1 INDUSTRY?

09:05:14 2 NOW, I'M NOT -- I ASSUME HE'S LOOKING AT CISCO'S GLOBAL

09:05:18 3 CONFIGURATION MODE?

09:05:19 4 MR. VAN NEST: YES.

09:05:20 5 THE COURT: AND I PRESUME THIS IS OFFERED TO COUNTER

09:05:23 6 MR. LOUGHEED SAYING THAT GLOBAL CONFIGURATION MODE WAS UNIQUE

09:05:28 7 AND CREATIVE TO CISCO?

09:05:31 8 MR. VAN NEST: YES.

09:05:32 9 MR. PAK: I DON'T THINK SO BECAUSE THIS IS ANOTHER

09:05:34 10 AREA THAT'S REALLY CONFUSING. AND I THINK YOUR HONOR DEALT

09:05:38 11 WITH THIS IN THE MOTION IN LIMINE WHEN WE HAD YOUR HONOR

09:05:42 12 EXCLUDE EXPERTS FROM USING VAGUE WORDS LIKE DE FACTO STANDARD.

09:05:47 13 AND NOW THOSE ARE EXPERTS WHERE THEY HAD DONE, SOMEONE

09:05:52 14 ELSE, WE HAVE SOMEBODY ELSE WHO HAS DONE NO ANALYSIS WHO IS A

09:05:55 15 LAY WITNESS, HE DOESN'T HAVE FOUNDATION FOR THIS, AND IT'S VERY

09:05:59 16 CONFUSING TO THE JURY BECAUSE AS WE KNOW THERE ARE TWO ISSUES.

09:06:02 17 THERE'S ORIGINALITY, WHICH IS MEASURED AT THE TIME OF CREATION.

09:06:08 18 MR. LOUGHEED'S TESTIMONY WAS, AT THE TIME WE CREATED THESE

09:06:12 19 MODES THERE WAS NOTHING LIKE IT.

09:06:13 20 THE COURT: DON'T KNOW WHAT TIMEFRAME HE'S TALKING

09:06:15 21 ABOUT HERE, I COULDN'T GLEAN THAT.

09:06:17 22 MR. PAK: AND SO I DON'T BELIEVE THAT ANYONE HAS

09:06:20 23 FOUND ANY EVIDENCE TO SHOW THAT, IN FACT, THESE MODES EXISTED

09:06:23 24 PRIOR TO MR. LOUGHEED, AND I DON'T THINK THIS WITNESS HAS ANY

09:06:27 25 FOUNDATION TO GO BACK TO 1986 TO TALK ABOUT THESE MODES AND

09:06:31 1 PROMPTS.

09:06:32 2 SO THIS IS HIGHLY CONFUSING TESTIMONY. AGAIN, IF HE WANTS

09:06:36 3 TO TIE IT TO A SPECIFIC PRODUCT --

09:06:38 4 THE COURT: IS THERE A TIMEFRAME THAT HE'S TALKING

09:06:41 5 ABOUT, MR. VAN NEST?

09:06:42 6 MR. VAN NEST: HE TALKS -- THIS IS NOT OFFERED

09:06:47 7 NECESSARILY TO COUNTER WHAT MR. LOUGHEED SAID. HE'S SELLING

09:06:50 8 CONTEMPORANEOUS WITH OUR TIME PERIOD HERE IN THE LATER 2008 AND

09:06:57 9 AFTER WE ARE OUT THERE ON THE MARKET. HE'S TALKING ABOUT THE

09:07:00 10 PERIOD MORE RECENTLY, RIGHT, WHICH IS THE DAMAGES PERIOD AND

09:07:04 11 THE PERIOD OF INFRINGEMENT.

09:07:05 12 BUT, YOUR HONOR, I POINT OUT HERE AGAIN ON PAGE 63, HE'S

09:07:10 13 TYING THESE MODES RIGHT TO THESE, TO THE BOOKS THAT HE'S

09:07:13 14 GETTING THE COMMANDS OUT OF.

09:07:14 15 YOU KNOW, THERE AT PAGE 63, LINE 5, AGAIN, AS I MENTIONED

09:07:18 16 EARLIER, ONE OF THE THINGS THAT GUIDED US WAS FOR EXAMPLE, WHAT

09:07:22 17 A REASONABLE PERSON, HOW A REASONABLE PERSON WOULD BECOME AWARE

09:07:25 18 OF THE COMMANDS NECESSARY TO PERFORM OPERATIONS LIKE

09:07:29 19 CONFIGURATION ON NETWORKING GEAR.

09:07:31 20 SO GLOBAL CONFIG MODE IS ONE THAT WOULD HAVE APPEARED IN

09:07:35 21 NETWORKING BOOKS IN LOCAL BOOK STORES.

09:07:38 22 SO LIKE THE OTHER COMMANDS ASSOCIATED WITH THE CLI, I

09:07:42 23 WOULD SAY THE COMMAND TO PUT YOU INTO THE GLOBAL CONFIG MODE,

09:07:46 24 WHICH IS JUST CONFIGURE, ET CETERA, ET CETERA, WERE TYPICAL.

09:07:50 25 HIS FOUNDATION IS HE CREATES THESE, THEY ARE IN BOOKS,

09:07:55 1 THEY ARE GETTING THEM FROM BOOKS, AND THE BOOKS ARE REFLECTING  
09:07:58 2 WHAT REASONABLE NETWORKING ENGINEERS UNDERSTOOD. IT'S NOT THE  
09:08:03 3 TIME -- HIS TIME PERIODS ARE ESTABLISHED BY WHEN HE WORKED AT  
09:08:08 4 THESE COMPANIES AND IT'S NOT BEFORE LOUGHEED.

09:08:10 5 MR. PAK: IT DOESN'T SAY THAT IN --

09:08:12 6 THE COURT: I'M SORRY, I JUST DIDN'T HAVE THE TIME TO  
09:08:14 7 READ THE WHOLE DEPOSITION, THAT'S WHY I'M ASKING YOU TO HELP ME  
09:08:17 8 OUT. THAT'S ALL IT IS.

09:08:18 9 MR. VAN NEST: YEAH, THAT'S WHAT I'M SAYING. IS THE  
09:08:20 10 TIME PERIODS WE ARE TALKING ABOUT --

09:08:24 11 THE COURT: IS PRE-CISCO?

09:08:24 12 MR. VAN NEST: IT'S PER THE INFRINGEMENT PERIOD OF  
09:08:26 13 THE CASE.

09:08:27 14 THE COURT: SO IT'S NOT RELEVANT TO CREATIVITY.

09:08:29 15 MR. VAN NEST: IT'S RELEVANT TO --

09:08:31 16 THE COURT: IT'S RELEVANT --

09:08:32 17 MR. VAN NEST: IT'S RELEVANT TO WHAT'S COMMONLY USED  
09:08:36 18 AND COMMON USAGE IN THE INDUSTRY DURING THE PERIOD --

09:08:38 19 THE COURT: THIS HAS BECOME A PROBLEM THAT WE GOT  
09:08:42 20 INTO THAT THIS MAY ESTABLISH THAT WHAT CISCO DOES HAS BECOME SO  
09:08:47 21 POPULAR THAT IT'S IN BOOKS, BUT IF IT'S PREVIOUSLY COPYRIGHTED  
09:08:49 22 AND PROTECTABLE, THEN THIS COPYING DOESN'T BECOME FREE JUST  
09:08:52 23 BECAUSE EVERYBODY IS DOING IT.

09:08:54 24 I MEAN, THAT'S -- SO THAT'S WHY THE TIMEFRAME IS IMPORTANT  
09:08:56 25 HERE. I THOUGHT YOU WERE OFFERING IT TO ESTABLISH THAT THESE

09:09:00 1 MODES AND PROMPTS WERE KNOWN IN THE INDUSTRY BEFORE CISCO USED  
09:09:03 2 THEM. AND THAT'S NOT -- THAT'S WHY I'M FOCUSING ON THE TIME  
09:09:07 3 PERIOD.  
09:09:07 4 AND TO THE EXTENT THAT HE'S TESTIFYING ABOUT A DATE, A  
09:09:10 5 PERIOD OF TIME AFTER CISCO DEVELOPED IT, THEN THIS -- I DON'T  
09:09:14 6 EVEN KNOW WHAT THIS IS RELEVANT TO, BUT I DON'T WANT THIS JURY  
09:09:18 7 TO THINK THAT JUST BECAUSE EVERYBODY WAS USING IT, THAT CISCO  
09:09:22 8 HAD GIVEN IT AWAY.  
09:09:23 9 MR. VAN NEST: WELL, OF COURSE WE HAVE AN ABANDONMENT  
09:09:27 10 CLAIM.  
09:09:27 11 THE COURT: YES, I UNDERSTAND IS THAT.  
09:09:29 12 MR. VAN NEST: AND THAT CISCO WAS LETTING EVERYONE  
09:09:31 13 USE IT AND WAS AWARE OF THAT --  
09:09:33 14 THE COURT: BUT THAT'S NOT GOING TO THE JURY,  
09:09:35 15 ABANDONMENT, IS IT?  
09:09:37 16 MR. VAN NEST: YES.  
09:09:37 17 THE COURT: IT WASN'T ON YOUR VERDICT FORM WHEN I WAS  
09:09:39 18 LOOKING AT IT, SO I WAS CONFUSED LAST NIGHT, BUT --  
09:09:43 19 MR. VAN NEST: IT IS, YOUR HONOR.  
09:09:43 20 THE COURT: WELL, IF IT'S GOING TO ABANDONMENT AND  
09:09:46 21 THAT'S GOING TO THE JURY, I WOULD LET IT IN WITH A SPECIAL  
09:09:49 22 INSTRUCTION LETTING THE JURY KNOW THAT IT'S LIMITED THAT WAY.  
09:09:57 23 MR. VAN NEST: WELL, I THINK IT'S NOT LIMITED TO  
09:09:59 24 ABANDONMENT, YOUR HONOR.  
09:10:01 25 IF HE'S TESTIFYING THAT THERE ARE BOOKS OUT THERE AND THE

09:10:05 1 NETWORK INDUSTRY FOLKS ALL USING THE SAME SETS OF COMMANDS, IT  
09:10:09 2 GOES TO WHAT'S COMMON, AND COMMON USAGE, WHETHER YOU CALL IT  
09:10:13 3 INDUSTRY PRACTICE OR NOT, COMMON USAGE IS CERTAINLY RELEVANT TO  
09:10:16 4 OUR GOOD FAITH, IT'S CERTAINLY RELEVANT TO FAIR USE. AND IT'S  
09:10:21 5 CERTAINLY RELEVANT TO DAMAGES, OF COURSE. IT'S RELEVANT TO A  
09:10:25 6 LOT OF ISSUES, SO I DON'T THINK IT'S NECESSARILY --  
09:10:28 7 THE COURT: WELL, AGAIN, I'M ONLY GOING TO ALLOW THIS  
09:10:31 8 IN IF IT IS -- I'M GOING TO INVITE CISCO TO PREPARE A SPECIAL  
09:10:37 9 INSTRUCTION, AND THEN I CAN LET IT IN SO YOU CAN HAVE IT FOR  
09:10:39 10 THOSE ISSUES.  
09:10:40 11 BUT I JUST WANT TO MAKE SURE THIS JURY DOESN'T THINK THAT  
09:10:43 12 BECAUSE CISCO'S CLI BECAME POPULAR, THAT THAT ALONE CAUSED IT  
09:10:49 13 TO BE GIVEN AWAY. THAT'S NOT YOUR ARGUMENT. AND I WANT THE  
09:10:52 14 JURY TO BE UNDERSTANDING THAT AS WELL.  
09:10:55 15 SO I WILL -- I GUESS THEN TO BE CONSISTENT I NEED TO, I'M  
09:11:02 16 GOING TO TAKE THE, STARTING AT PAGE 62, LINE 13 AND THESE  
09:11:09 17 REMAINING THREE OBJECTIONS SPANNING PAGES 62 AND 63 AND 64, I  
09:11:14 18 WILL OVERRULE THE OBJECTION AND ALLOW A SPECIAL INSTRUCTION.  
09:11:21 19 MR. VAN NEST: THANK YOU, YOUR HONOR.  
09:11:21 20 MR. PAK: AND, YOUR HONOR, JUST TO BE -- I THINK  
09:11:25 21 THERE ARE -- I APPRECIATE YOUR HONOR'S INSTRUCTION VERY MUCH.  
09:11:27 22 BUT THE QUESTION THAT WE WERE JUST LOOKING AT ON PAGE 63  
09:11:30 23 USES THE WORD "TYPICAL" IN THE INDUSTRY. THE OTHER QUESTIONS  
09:11:35 24 THAT WE OBJECTED TO USE THE WORD INDUSTRY "STANDARD" OR  
09:11:39 25 "STANDARD" IN THE INDUSTRY, AND I THINK THAT DOES RAISE SOME OF

09:11:42 1 THE CONCERNS THAT WE HAVE BEEN HAVING ABOUT WHETHER IT'S IN THE  
09:11:44 2 CONTEXT OF THE MOTION IN LIMINE OR HIS OWN TESTIMONY THAT THE  
09:11:49 3 WORD "STANDARD" IS VAGUE.

09:11:50 4 THE COURT: WELL, I WILL ALLOW THE EXPERT TO USE DE  
09:11:53 5 FACTO STANDARD. INDUSTRY STANDARD I'M NOT KEEPING OUT OF THE  
09:11:56 6 TRIAL AND IT'S BEEN THROUGHOUT. BUT IT WAS THE DE FACTO  
09:12:00 7 BECAUSE I DIDN'T FEEL HE HAD SUFFICIENT FOUNDATION. SO I THINK  
09:12:02 8 THIS SHOULD GIVE YOU --

09:12:04 9 MR. PAK: OKAY. I APPRECIATE THAT.

09:12:06 10 THE COURT: SUFFICIENT BALANCE IN RULING, SO WE WILL  
09:12:10 11 PREPARE THAT LIMITING INSTRUCTION IF THEY WANT TO PUT THIS IN.  
09:12:14 12 THANK YOU VERY MUCH.

09:12:14 13 MR. VAN NEST: YOUR HONOR, BEFORE WE BRING THE JURY  
09:12:15 14 IN, JUST A COUPLE HOUSEKEEPING HEADS UP AND GET YOUR HONOR'S  
09:12:19 15 INSTRUCTION.

09:12:19 16 THE COURT: YES.

09:12:20 17 MR. VAN NEST: I EXPECT THAT AFTER MR. CHAMBERS,  
09:12:23 18 CISCO IS GOING TO REST, SUBJECT TO CALLING MR. SHAVER TOMORROW.

09:12:28 19 THE COURT: OKAY.

09:12:28 20 MR. VAN NEST: AND WE'VE ALL AGREED ON THAT.

09:12:30 21 THE COURT: OKAY.

09:12:30 22 MR. VAN NEST: IT WAS OUR INTENTION NOT TO MAKE A  
09:12:32 23 JUDGMENT AS A MATTER OF LAW MOTION UNTIL LATER IN THE WEEK WHEN  
09:12:36 24 ALL THE CASE WAS DONE. I'M NOT SURE WHEN EXACTLY WE WILL BE  
09:12:40 25 DONE WITH SHAVER, AND THERE MAY BE SOME OTHER OPEN ISSUES WHERE

09:12:44 1 I'VE SAID, YES, YOU CAN DO THAT IN MY CASE.

09:12:46 2 SO UNLESS YOUR HONOR HAS A DIFFERENT REQUIREMENT OR

09:12:49 3 SUGGESTION, WE WILL WAIT UNTIL THE END OF THE WEEK, AND WE WILL

09:12:52 4 FILE OUR MOTION FOR JUDGMENT AS A MATTER OF LAW THEN ON

09:12:55 5 WHATEVER ISSUES SEEM APPROPRIATE.

09:12:57 6 THE COURT: OKAY. I WANT TO MAKE SURE THAT YOU HAVE

09:13:00 7 THE OPPORTUNITY TO PRESERVE YOUR RECORD IN THE WAY YOU THINK IS

09:13:05 8 BEST.

09:13:06 9 SO IF YOU WOULD LIKE TO MAKE A PLACE HOLDER MOTION THAT'S

09:13:11 10 SOMEWHAT CRYPTIC FOR THE JURY BECAUSE YOU THINK THAT'S

09:13:14 11 NECESSARY, THEN BY ALL MEANS DO IT.

09:13:16 12 BUT, YES, YOUR BRIEFING ON IT AND SUBMISSION TO ME CAN BE

09:13:18 13 AT THE END OF ALL OF CISCO'S EVIDENCE.

09:13:20 14 MR. VAN NEST: RIGHT. I DON'T THINK WE NEED TO MAKE

09:13:22 15 THE PLACE HOLDER EARLIER, AND GIVEN THE WAY THE CASE IS

09:13:25 16 DEVELOPING IT WILL BE FINE TO DO IT AT THE END OF THE WEEK.

09:13:28 17 BUT WE WILL FILE IT THEN WHEN THE REBUTTALS ARE CLOSED.

09:13:33 18 THE COURT: OKAY. MR. NELSON, YOU DON'T OBJECT TO

09:13:35 19 THAT?

09:13:35 20 MR. NELSON: NO, YOUR HONOR. RULE 50 ADJUST REQUIRES

09:13:37 21 A MOTION BEFORE IT'S SUBMITTED TO THE JURY. SO THE TIMING ON

09:13:41 22 THAT IT FINE.

09:13:42 23 MR. VAN NEST: THE OTHER THING IS IN LIGHT OF

09:13:44 24 YOUR HONOR'S E-MAIL ON THE VERDICT FORM AND SO ON, THE PARTIES

09:13:47 25 ARE MEETING AND CONFERRING AND EXCHANGING FORMS. I THINK WE

09:13:51 1 WOULD AIM TO BE ABLE TO GET YOU A FORM CLOSE OF BUSINESS

09:13:53 2 TOMORROW.

09:13:55 3 THE COURT: OH, THAT'S WONDERFUL.

09:13:56 4 MR. VAN NEST: TUESDAY. AND THE OBJECTION ARGUMENTS

09:14:00 5 HAVE NARROWED SOME AND THERE'S A FAMOUS JURY INSTRUCTION 39-41.

09:14:04 6 WOULD YOUR HONOR ENTERTAIN A BRIEF ON THAT ISSUE ON JURY

09:14:10 7 INSTRUCTION ISSUES?

09:14:11 8 THE COURT: MAYBE I CAN CUT THROUGH IT OR MAYBE YOU

09:14:12 9 WILL REALIZE YOU NEED TO DO SOME BRIEFING ON IT. ONE OF THE

09:14:16 10 MAIN ISSUES THERE WAS WHETHER THE COMPARISON WAS TO WORK AS A

09:14:19 11 WHOLE.

09:14:20 12 AND I'VE DETERMINED THAT IT IS. I AGREED WITH THE

09:14:23 13 ARGUMENT THAT YOU MADE IN OUR INITIAL DISCUSSION. EACH SIDE

09:14:29 14 GAVE ME THREE CASES TO LOOK AT PRIMARILY. I LOOKED AT THOSE.

09:14:33 15 I'M GOING TO HAVE AN ORDER THAT'S JUST ABOUT READY TO GO OUT.

09:14:36 16 BUT DOES THAT TAKE CARE OF THE ISSUE?

09:14:38 17 MR. VAN NEST: IT MIGHT. I'M NOT SURE.

09:14:40 18 MR. KWUN, DOES THAT TAKE CARE OF THE ISSUE?

09:14:43 19 MR. KWUN: I THINK THAT CERTAINLY LIMITS THE ISSUE.

09:14:46 20 WE APPRECIATE THAT.

09:14:47 21 MR. VAN NEST: SO WE WILL LOOK AT YOUR ORDER, AND IF

09:14:50 22 WE THINK THERE'S SOMETHING WE NEED TO RAISE, WE WILL ASK YOU IN

09:14:54 23 THE MORNING WHETHER YOU NEED ANY MORE.

09:14:57 24 BUT THE VERDICT FORM, THE PARTIES ARE WORKING ON IT, AND

09:15:00 25 WE WILL GET YOU SOMETHING CLOSE OF BUSINESS TOMORROW.

09:15:02 1 THE COURT: SO IT MAY BE THAT ONCE NOW THAT I'VE  
09:15:04 2 DECIDED AND INFORMED YOU ON THAT IT MAY BE THE STANDARD OF  
09:15:08 3 COMPARISON TO THE WORK AS A WHOLE, THAT MAY ALLOW YOU TO  
09:15:12 4 PROVIDE ME A DRAFT AS TO 39. AND I THINK 41 WAS YOUR SET OF  
09:15:17 5 INSTRUCTIONS AS THE ALTERNATIVE, IT WAS PRETTY COMPLICATED, IT  
09:15:20 6 WAS SUCH A KNOT THAT WE HAD TO MOVE ON.  
09:15:23 7 MR. KWUN: YES, YOUR HONOR. AND I THINK THAT BOTH  
09:15:24 8 SIDES HAVE BEEN TREATING INSTRUCTION 39 AND 41 TOGETHER.  
09:15:27 9 THE COURT: YES.  
09:15:28 10 MR. KWUN: AND I THINK THAT THE -- PROBABLY THE TWO  
09:15:30 11 KEY ISSUES WERE WHAT THE COMPARISON WAS VERSUS THE WHOLE YOU  
09:15:37 12 JUST MENTIONED.  
09:15:38 13 THE OTHER ONE WAS IT IS STANDARD WHICH I UNDERSTAND FROM  
09:15:40 14 YOUR PREVIOUS COMMENTS WOULD BE VIRTUALLY IDENTITY OR YOU ARE  
09:15:45 15 STRONGLY LEANING THAT WAY.  
09:15:47 16 THE COURT: SO THAT'S WHERE I'M LEANING, BUT BECAUSE  
09:15:53 17 THE PARTIES, AND MOSTLY ARISTA, HAD ASKED ME TO CONSIDER  
09:15:56 18 EVIDENCE SUBMITTED AT TRIAL ON SOME OF YOUR ADDITIONAL FACTORS,  
09:15:59 19 I FEEL THAT I CAN'T REACH A DECISION ON THAT UNTIL I'VE HEARD  
09:16:03 20 THE ENTIRE CASE.  
09:16:04 21 MR. KWUN: UNDERSTOOD, YOUR HONOR.  
09:16:05 22 THE COURT: NOW, IF I'VE ALREADY REACHED THAT  
09:16:07 23 DECISION IN YOUR FAVOR BEFORE I'VE HEARD ALL THE EVIDENCE YOU  
09:16:11 24 WANTED ME TO CONSIDER, PERHAPS I CAN GO AHEAD AND DO THAT AND I  
09:16:15 25 DON'T KNOW THAT THERE'S ANY -- BECAUSE I BELIEVE CISCO SAID

09:16:20 1 THEY THOUGHT EVERYTHING COULD BE SUBMITTED WITHOUT EVIDENCE AT  
09:16:24 2 TRIAL.

09:16:24 3 MR. VAN NEST: CERTAINLY IF YOU DECIDED IN OUR FAVOR,  
09:16:27 4 YOUR HONOR, I'M NOT GOING TO TAKE UP THE OPPORTUNITY TO PRESENT  
09:16:30 5 ANYTHING MORE.

09:16:30 6 THE COURT: THAT'S CERTAINLY THE WAY IT WORKS, ISN'T  
09:16:32 7 IT.

09:16:33 8 MR. VAN NEST: THAT'S ALL I HAD THIS MORNING,  
09:16:35 9 YOUR HONOR.

09:16:35 10 THE COURT: AND THEN TO THE OBJECTIONS TO THE  
09:16:39 11 EXHIBITS, YOU WILL BRING THE EXHIBITS AND MAKE YOUR ARGUMENT,  
09:16:41 12 WE WILL DO TOMORROW, IF NEED BE.

09:16:43 13 MR. VAN NEST: WE WILL CONTINUE ON OUR PROTOCOL OF  
09:16:45 14 NOTIFYING THE OTHER SIDE BY 5:00 BECAUSE WE NEED TO KNOW WHAT  
09:16:49 15 PEOPLE ARE COMPLAINING ABOUT. BUT WE UNDERSTAND YOU HAVE GIVEN  
09:16:53 16 US JUDICIAL NOTICE THAT YOU WILL BE IGNORING SOME OF THAT AND  
09:16:55 17 WE COULD DO IT LIVE IN THE MORNING.

09:16:56 18 THE COURT: AND YOU KNOW, WE ARE ALL IN HERE IN COURT  
09:16:58 19 ALL DAY AND YOU'VE GOT A STAFF THAT ARE WORKING AHEAD AT MY  
09:17:02 20 REQUEST, AND I GREATLY APPRECIATE IT. IT'S JUST THAT IT DIDN'T  
09:17:05 21 WORK OUT BECAUSE WHEN YOU'RE GETTING TO IT AND MAKING YOUR  
09:17:09 22 FINAL DECISIONS IS WHEN I'M NOT WORKING ON IT.

09:17:14 23 SO I THINK THIS WILL BE MUCH MORE EFFICIENT, AND WE WILL  
09:17:17 24 HAVE FAR FEWER PROBLEMS.

09:17:19 25 MR. VAN NEST: AGREED.

09:17:19 1 THE COURT: ALL RIGHT. THE LAST THING THAT I WOULD  
09:17:21 2 LIKE TO ASK, AND I DON'T KNOW WHETHER ALL THE EXHIBITS ARE IN,  
09:17:24 3 I WOULD ACTUALLY LIKE FOR ME, AND MAYBE THE JURY NEEDS IT AS  
09:17:27 4 WELL, BUT I DON'T REQUIRE IT, I WOULD LIKE A LIST OF EXHIBITS  
09:17:30 5 THAT ARE ASSOCIATED WITH EACH OF THE WORKS. BECAUSE THE JURY  
09:17:36 6 IS GOING TO HAVE TO LOOK AT THE WORKS AS A WHOLE, I DON'T EVEN  
09:17:39 7 KNOW WHERE THEY ARE IN THE EVIDENCE.  
09:17:41 8 IT OCCURS TO ME, AND I ASK YOU THIS, I'M NOT REQUIRING IT,  
09:17:44 9 DOES IT MAKE SENSE TO GIVE THE JURY A SHEET THAT DIRECTS THEM  
09:17:49 10 TO WHERE THOSE EXHIBITS ARE, BECAUSE THEY ARE REQUIRED TO MAKE  
09:17:52 11 THE COMPARISON? PLEASE CONSIDER THAT.  
09:17:54 12 IF YOU BOTH AGREE, THAT'S GREAT, IF YOU DISAGREE, AGAIN, I  
09:17:58 13 DON'T PICK EXHIBITS OUT TO HIGHLIGHT FOR THE JURY, IT'S NOT MY  
09:18:01 14 JOB.  
09:18:02 15 MR. NELSON: THAT'S FINE, YOUR HONOR. WE CAN WORK  
09:18:04 16 THAT OUT WITH THEM.  
09:18:06 17 THE COURT: GOOD. I WOULD LIKE TO KNOW WHERE THEY  
09:18:08 18 ARE.  
09:18:08 19 MR. NELSON: SURE, UNDERSTOOD.  
09:18:09 20 THE COURT: BECAUSE, ULTIMATELY, THAT'S GOING TO BE  
09:18:11 21 IMPORTANT FOR ME, AND I DON'T THINK I'VE EVER SEEN THAT EXHIBIT  
09:18:14 22 THAT IS THE WORK AS A WHOLE. I MEAN, DON'T EVEN KNOW WHAT THAT  
09:18:19 23 IS. BECAUSE SOME OF THESE WERE SO BIG I COULDN'T MANAGE THEM  
09:18:23 24 PHYSICALLY.  
09:18:24 25 MR. NELSON: RIGHT. UNDERSTOOD, YOUR HONOR. WE WILL

09:18:25 1 SEE IF WE CAN WORK THAT OUT.

09:18:27 2 THE COURT: OKAY. AND I THINK ALL OF JURORS ARE

09:18:31 3 HERE. SO I WILL ASSESS 15 MINUTES EQUALLY BETWEEN THE SIDES

09:18:34 4 FOR THE EXTRA TIME TAKEN THIS MORNING.

09:18:38 5 OKAY. AND I THINK MY VOICE WILL LIKE RESTING A LITTLE AND

09:18:45 6 I WILL BE READY TO LISTEN.

09:19:37 7 (JURY IN AT 9:19 A.M.)

09:19:39 8 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

09:20:13 9 GOOD MORNING, LADIES AND GENTLEMEN, WE ARE BACK ON THE

09:20:15 10 RECORD IN CISCO VERSUS ARISTA. ALL OF OUR JURORS ARE HERE.

09:20:21 11 YOU CAN TELL MY VOICE IS DISAPPEARING, SO YOU WON'T BE

09:20:23 12 HEARING MUCH FROM ME TODAY.

09:20:26 13 DR. CHEVALIER IS HERE. GOOD MORNING. I'M GOING TO HAVE

09:20:28 14 YOU SWORN FOR A NEW COURT DAY AND MR. PAK IS GOING TO CONTINUE

09:20:32 15 WITH DIRECT EXAM.

09:20:33 16 MR. PAK: THAT'S CORRECT, YOUR HONOR.

09:20:35 17 (**PLAINTIFF'S WITNESS, DR. JUDITH CHEVALIER, WAS SWORN.**)

09:20:36 18 THE WITNESS: YES.

09:20:49 19 THE COURT: GO AHEAD.

09:20:51 20 **DIRECT EXAMINATION**

09:20:51 21 BY MR. PAK:

09:20:52 22 Q. WELCOME BACK, DR. CHEVALIER. I THINK WE WERE ALMOST DONE

09:20:56 23 WITH YOUR DIRECT PRESENTATION, SO I WANT TO GO BACK TO SLIDE

09:21:00 24 29.

09:21:02 25 AND I THOUGHT IT WOULD ACTUALLY BE HELPFUL JUST TO START

09:21:05 1 BACK UP HERE AGAIN AND THEN GO TO THE CALCULATIONS AND JUST  
09:21:08 2 HAVE YOU EXPLAIN AGAIN WHAT YOU WERE DOING WITH THE MARKET  
09:21:11 3 SHARE ANALYSIS, AND SPECIFICALLY HOW THE FIGURE ON THE RIGHT  
09:21:17 4 RELATES TO THE FIGURE ON THE LEFT.

09:21:18 5 SO IF YOU COULD JUST WALK THE JURY AGAIN THROUGH YOUR  
09:21:22 6 MARKET SHARE ANALYSIS USING THIS GRAPHIC.

09:21:26 7 A. OKAY. SURE.

09:21:27 8 SO AGAIN, WE ARE IN THE PART OF THE DAMAGES WHERE WE ARE  
09:21:30 9 CALCULATING ARISTA -- CISCO'S ACTUAL DAMAGES, ALL CALLED THE  
09:21:34 10 "LOST PROFITS."

09:21:35 11 AND IN THIS PART WE HAVE ALREADY ESTABLISHED AT THIS PLACE  
09:21:40 12 WHERE WE ARE, WE HAVE ALREADY ESTABLISHED THE SHARE OF ARISTA'S  
09:21:43 13 SALES THAT WOULD NOT HAVE BEEN MADE, BUT FOR THE INFRINGEMENT,  
09:21:48 14 AND THAT IS THE SHARE THAT SOME OF WHICH MIGHT -- WOULD BE  
09:21:54 15 EXPECTED TO FLOW TO CISCO.

09:21:57 16 AND WHAT WE HAVE HERE IN THIS PICTURE IS A DEPICTION OF  
09:22:01 17 HOW INDEED THAT -- THOSE SALES OF ARISTA ARE DETERMINED BY ME  
09:22:07 18 TO ACTUALLY FLOW TO CISCO AND OTHERS.

09:22:10 19 SO IN THE PICTURE ON THE LEFT YOU CAN SEE ARISTA'S  
09:22:19 20 PRE-EXISTING SALES. AND THEY KEEP THAT THEN LOSE THIS SLICE  
09:22:22 21 BECAUSE THAT'S THE PART THAT WE DETERMINED THEY WOULD KEEP EVEN  
09:22:25 22 IF THEY WEREN'T -- WITH EVEN -- IF THEY WEREN'T ALLOWED TO  
09:22:30 23 INFRINGEMENT CISCO'S COPYRIGHTS. AND THEN THE OTHER PART, AND  
09:22:34 24 THE PART THAT THEY WOULDN'T BE ABLE TO MAKE BUT THAT SOMEONE  
09:22:39 25 ELSE WOULD PRESUMABLY SELL.

09:22:42 1 AND WE DIDN'T ASSUME THAT CISCO WOULD GET ALL OF THOSE, I  
09:22:45 2 DIDN'T ASSUME THAT CISCO WOULD GET ALL OF THOSE SALES BECAUSE  
09:22:48 3 THERE ARE OTHER COMPETITORS IN THE MARKET PLACE.

09:22:55 4 AND SO THE ARISTA SHARE GOES TO ALL OF THE OTHER  
09:22:57 5 COMPETITORS IN THE MARKETPLACE PROPORTIONALLY TO THEIR SHARE IN  
09:23:02 6 THE, WHAT WE CALL THE BUT-FOR MARKET.

09:23:05 7 SO THE PICTURE ON THE RIGHT IS THE SHARES OF THE FIRM IN  
09:23:10 8 THE MARKET TAKING ARISTA OUT; RIGHT. SO IF ARISTA HAS A CHUNK,  
09:23:15 9 WE TAKE THAT CHUNK OUT. AND THEN WHAT'S LEFT IS DIVIDED UP BY  
09:23:21 10 THE OTHER FIRMS IN THE SAME RATIO AS THEIR SHARES IN THE  
09:23:25 11 MARKET.

09:23:25 12 Q. AND JUST TO BE CLEAR, I DON'T SEE ON THE RIGHT-HAND SIDE  
09:23:28 13 THE LITTLE BLUE SLICE THAT WE HAVE LEFT FOR ARISTA. CAN YOU  
09:23:31 14 EXPLAIN WHY THAT IS IN THE DEPICTION?

09:23:33 15 A. RIGHT. SO WE DON'T HAVE ARISTA'S -- I DON'T HAVE ARISTA'S  
09:23:36 16 SALES GOING SOMEHOW BACK TO ARISTA. WE HAVE ALREADY  
09:23:41 17 ESTABLISHED HOW MUCH OF ARISTA'S SALES ARISTA WILL KEEP IF IT'S  
09:23:44 18 NOT INFRINGING CISCO'S COPYRIGHTS.

09:23:49 19 AND SO ARISTA'S SHARE IS THEN DIVIDED AMONG ALL OF THE  
09:23:55 20 OTHER FIRMS IN THE MARKET, NOT JUST CISCO.

09:23:58 21 Q. THANK YOU.  
09:23:59 22 SO WITH THAT, LET'S PICK UP WHERE WE LEFT OFF ON FRIDAY  
09:24:03 23 NIGHT WHICH WAS LOOKING AT YOUR SPECIFIC CALCULATIONS. AND  
09:24:06 24 HERE JUST TO BE CLEAR, DR. CHEVALIER, YOU HAVE A SET OF  
09:24:09 25 CALCULATIONS WITH THE TITLE CREHAN DATA. THEN YOU HAVE AT THE

09:24:18 1 BOTTOM WITH ANOTHER SET OF ALLEGATIONS, DELL'ORO DATA.

09:24:24 2 CAN YOU DESCRIBE FOR THE JURY WHY YOU HAVE TWO SETS OF

09:24:28 3 CALCULATIONS FOR THE JURY?

09:24:29 4 A. WE USE THESE TWO DATA SOURCES, BECAUSE MARKET SHARE DATA,

09:24:34 5 WE DON'T GET FROM EITHER OF THE PARTIES BECAUSE IT INCLUDES

09:24:38 6 SALES. IN ORDER TO GET MARKET SHARES YOU NEED TO KNOW

09:24:41 7 EVERYBODY IN THE MARKET SALES.

09:24:42 8 SO THE COMPANIES IN THIS MARKET USE COMMERCIAL VENDORS TO

09:24:51 9 GET INFORMATION ABOUT THEIR MARKET SHARE. AND CREHAN AND

09:24:57 10 DELL'ORO ARE TWO PROVIDERS THAT ARE BOTH WELL KNOWN AND WELL

09:25:01 11 ESTABLISHED IN THE MARKETPLACE.

09:25:02 12 SO I'VE JUST INCLUDED THEM HERE TO SHOW BOTH OF THE MAJOR

09:25:05 13 COMMERCIAL PROVIDERS' ESTIMATES OF MARKET SHARE. SO YOU CAN

09:25:10 14 SEE THAT, THAT'S HOW THAT DIFFERS.

09:25:14 15 Q. SO JUST TO BE CLEAR FOR THE JURY, SO THESE ARE

09:25:17 16 CONSULTANCIES THAT BASICALLY TELL MARKET VENDORS, HERE'S YOUR

09:25:21 17 MARKET SHARE, HERE'S YOUR OTHER COMPETITOR'S MARKET SHARE AND

09:25:25 18 SO FORTH. AND BECAUSE THEY ARE TWO COMPANIES, THEY MAY HAVE

09:25:28 19 SLIGHTLY DIFFERENT MARKET SHARE NUMBERS FROM TIME TO TIME; IS

09:25:32 20 THAT RIGHT?

09:25:32 21 A. EXACTLY.

09:25:32 22 Q. SO I WOULD LIKE TO DO IS HAVE YOU WALK THROUGH THE FIRST

09:25:35 23 TOP PORTION AND EXPLAIN HOW YOU GOT TO THE \$334 MILLION NUMBER

09:25:41 24 THAT'S IN THE MIDDLE RIGHT-HAND SIDE.

09:25:45 25 A. OKAY. SO STARTING ON THE VERY LEFT, WE HAVE ADJUSTED

09:25:49 1 ARISTA SWITCH REVENUE.

09:25:51 2 SO THERE I 'VE TAKEN ARISTA'S TOTAL SWITCH REVENUE AND THEN

09:25:56 3 TAKEN 80 PERCENT OF IT TO GET TO THE ADJUSTMENT, AND THEN THE

09:26:01 4 BUT-FOR MARKET SHARE IS THE PART OF THAT THAT WILL GO TO CISCO

09:26:06 5 THROUGH THE CALCULATION THAT WE JUST DESCRIBED.

09:26:09 6 AND THEN THE BRIGHT BLUE -- SO THAT GIVES US THE BRIGHT

09:26:13 7 BLUE BAND IN THE MIDDLE WHICH IS CISCO'S LOST REVENUES.

09:26:16 8 SO WE 'VE GOTTNEN TO STARTING FROM ARISTA'S REVENUES TO THE

09:26:21 9 ADJUSTED REVENUES TO THE PART THAT WOULD GO TO CISCO TO THE

09:26:24 10 MIDDLE BAND BEING CISCO'S LOST REVENUES.

09:26:28 11 BUT OF COURSE IF CISCO WERE TO MAKE ADDITIONAL SALES IN

09:26:32 12 THIS BUT-FOR WORLD, THEY WOULD ALSO BEAR ADDITIONAL COSTS. THE

09:26:36 13 WHOLE REVENUE ISN'T PROFIT. SO WE TAKE CISCO'S LOST REVENUE

09:26:41 14 AND WE MULTIPLY BY CISCO'S PROFIT MARGIN, AND THAT GIVES US AT

09:26:46 15 THE END, CISCO'S LOST PROFITS.

09:26:47 16 AND THEN THAT'S CALCULATED YEAR BY YEAR THROUGH THE DAMAGE

09:26:53 17 PERIOD TO TOTAL TO THE \$334,961, IN THE UPPER PANEL THAT YOU

09:26:58 18 SEE.

09:26:59 19 Q. OKAY. SO WE HAVE ADJUSTED ARISTA SWITCH REVENUE. THEN WE

09:27:04 20 ARE MULTIPLYING IT BY THAT MARKET SHARE ANALYSIS THAT YOU DID

09:27:08 21 ON THE RIGHT-HAND SIDE?

09:27:10 22 A. RIGHT.

09:27:10 23 Q. THEN YOU GET THE CISCO'S LOST REVENUES IN BLUE IN THE

09:27:14 24 MIDDLE?

09:27:14 25 A. YES.

09:27:15 1 Q. THEN YOU ARE TAKING CISCO'S PROFIT MARGIN NUMBERS TO GET  
09:27:18 2 CISCO'S LOST PROFITS; IS THAT WHAT YOU DID?  
09:27:21 3 A. THAT'S EXACTLY RIGHT, THAT'S WHAT I DID.  
09:27:23 4 Q. AND THEN YOU ARE DOING IT FOR HOW MANY YEARS HERE ON THE  
09:27:26 5 TOP?  
09:27:27 6 A. OKAY. SO IT'S FOR SIX YEARS, THOUGH YOU WILL NOTE THAT  
09:27:31 7 THE 2016, IT'S A SMALL NUMBER BECAUSE WE ONLY -- I ONLY HAVE  
09:27:35 8 DATA THROUGH MARCH OF 2016.  
09:27:38 9 Q. OKAY. SO WHEN YOU ADD UP THAT SET OF CALCULATIONS ON THE  
09:27:42 10 WAY RIGHT, 2011 TO 2016, CAN YOU STATE ON THE RECORD THE NUMBER  
09:27:47 11 THAT YOU ARRIVED AT FOR THE CREHAN MARKET SHARE DATA AS CISCO'S  
09:27:53 12 LOST PROFITS?  
09:27:55 13 A. OKAY. SO CISCO'S TOTAL LOST PROFITS ARE \$334,961,000.  
09:28:03 14 Q. THEN IF WE GO TO THE BOTTOM HALF OF THE CHART, I THINK YOU  
09:28:06 15 APPLIED THE SAME ANALYSIS; IS THAT CORRECT?  
09:28:07 16 A. CORRECT.  
09:28:08 17 Q. AND IF YOU DID THE -- IF YOU USED THE MARKET SHARE NUMBERS  
09:28:12 18 FROM DELL'ORO, WHAT WERE THE NUMBERS THAT YOU GOT IN TERMS OF  
09:28:16 19 THE CISCO LOST PROFITS FOR THE SAME TIME PERIOD?  
09:28:19 20 A. SO THE LOST PROFITS USING THE DELL'ORO DATA TOTAL  
09:28:26 21 \$310,694,000.  
09:28:27 22 Q. AND AGAIN, WE ARE JUST TALKING ABOUT CISCO'S LOST PROFITS  
09:28:30 23 AT THIS POINT; IS THAT RIGHT?  
09:28:31 24 A. RIGHT, JUST CISCO'S LOST PROFITS.  
09:28:33 25 Q. AND AT A LATER POINT IN THE TRIAL YOU WILL COME TO TALK

09:28:36 1 MORE ABOUT ARISTA'S DISGORGEMENT OR DISGORGEMENT OF ARISTA'S  
09:28:41 2 PROFITS?  
09:28:41 3 A. CORRECT.  
09:28:42 4 Q. OKAY. SO I THINK THAT WRAPS UP THE COPYRIGHT DAMAGES  
09:28:47 5 PRESENTATION FOR NOW AND WE ARE GOING TO FOCUS ON THE PATENT  
09:28:51 6 INFRINGEMENT ISSUES IN THE CASE.  
09:28:57 7 AT A VERY HIGH LEVEL, CAN YOU SUMMARIZE FOR US THE TYPE OF  
09:29:01 8 ANALYSIS YOU DID WITH RESPECT TO THE PATENT DAMAGES USING SLIDE  
09:29:04 9 33.  
09:29:04 10 A. OKAY. SO FIRST, THE PATENT LAW TELLS US THAT THE PATENT  
09:29:09 11 HOLDER IS ENTITLED TO, AT LEAST A REASONABLE ROYALTY FROM THE  
09:29:17 12 INFRINGER. SO THAT'S THE AMOUNT OF MONEY THAT THE INFRINGER  
09:29:21 13 SHOULD HAVE PAID IN ORDER TO USE THE PATENTED TECHNOLOGY.  
09:29:26 14 Q. OKAY. AND WHAT WAS THE TIME PERIOD THAT YOU WERE LOOKING  
09:29:28 15 AT IN TERMS OF THE PATENT DAMAGES?  
09:29:30 16 A. OKAY. SO THE PATENT DAMAGES ARE FROM THE TIME OF ARISTA  
09:29:36 17 PROVIDING -- CISCO PROVIDING NOTICE TO ARISTA THROUGH TRIAL.  
09:29:43 18 AND SO THAT DATE IS DECEMBER 5TH, 2014, THROUGH TODAY.  
09:29:50 19 Q. OKAY. AND THEN THERE'S SOMETHING TITLED "HYPOTHETICAL  
09:29:54 20 NEGOTIATION" AT THE TOP, THEN YOU HAVE A PICTURE OF PEOPLE AT A  
09:29:56 21 CONFERENCE ROOM TABLE.  
09:29:57 22 CAN YOU EXPLAIN WHAT YOU WERE ILLUSTRATING WITH THIS IDEA  
09:29:59 23 OF A HYPOTHETICAL NEGOTIATION?  
09:30:02 24 A. OKAY. SO THERE'S A CASE IN PATENT LAW CALLED THE GEORGIA  
09:30:08 25 PACIFIC CASE. AND THE GEORGIA PACIFIC CASE DESCRIBES VARIOUS

09:30:12 1 THINGS THAT SHOULD BE CONSIDERED IN CONSTRUCTING PATENT

09:30:15 2 DAMAGES.

09:30:15 3 AND ONE OF THE THINGS TO BE CONSIDERED IS WHAT'S CALLED A

09:30:18 4 HYPOTHETICAL NEGOTIATION. AND A HYPOTHETICAL NEGOTIATION TAKES

09:30:23 5 THE IDEA THAT WE CAN THINK ABOUT A NEGOTIATION THAT NEVER

09:30:27 6 ACTUALLY HAPPENED, BUT ASSESS WHAT WOULD HAVE HAPPENED IF THIS

09:30:33 7 NEGOTIATION TOOK PLACE.

09:30:34 8 AND THE IDEA IS WE GO BACK TO THE FOURTH QUARTER OF 2008

09:30:40 9 WHICH IS THE TIME OF FIRST INFRINGEMENT BY ARISTA, AND WE

09:30:43 10 IMAGINE THAT CISCO AND ARISTA ARE UNDERTAKING A NEGOTIATION,

09:30:50 11 THUS THE LITTLE PICTURE OF THE CONFERENCE TABLE.

09:30:52 12 AND IN THAT NEGOTIATION THEY BOTH UNDERSTAND THAT IF

09:30:57 13 ARISTA DOES NOT TAKE A LICENSE FOR THIS TECHNOLOGY, IT WOULD

09:31:02 14 THEN BE INFRINGING.

09:31:03 15 SO WE ARE LOOKING AT A SITUATION IN WHICH CISCO AND ARISTA

09:31:07 16 ARE NEGOTIATING TERMS FOR A LICENSE FOR THE TECHNOLOGY AND WE

09:31:11 17 ARE ASKED BY THE GEORGIA PACIFIC CASE TO CONSIDER WHAT TERMS

09:31:16 18 WOULD EMERGE FROM THAT HYPOTHETICAL NEGOTIATION.

09:31:19 19 Q. AND WHEN WOULD THAT HYPOTHETICAL NEGOTIATION BE CONDUCTED

09:31:22 20 IN TERMS OF TIME?

09:31:23 21 A. AH. SO EVEN THOUGH THE DAMAGES PERIOD STARTS IN 2014, THE

09:31:29 22 HYPOTHETICAL NEGOTIATION IS TO TAKE PLACE AT THE TIME OF FIRST

09:31:34 23 INFRINGEMENT, SO IN THE FOURTH QUARTER OF 2008.

09:31:37 24 Q. OKAY. SO THIS IS -- WE ARE ACTUALLY SAYING TO OURSELVES,

09:31:43 25 IF THE PARTIES HAD GOTTEN TOGETHER SOMEHOW IN LATE 2008, AND

09:31:47 1 INSTEAD OF LITIGATION, HAD DECIDED TO NEGOTIATE A LICENSE, WHAT  
09:31:49 2 WOULD THE TERMS BE AS PART OF A REASONABLE NEGOTIATION BETWEEN  
09:31:53 3 THE PARTIES AT THAT TIME?  
09:31:54 4 A. THAT'S EXACTLY CORRECT. AND ONE QUICK NOTE, SO THIS IS --  
09:31:58 5 THE NEGOTIATION IS FOR A NONEXCLUSIVE LICENSE TO USE THE  
09:32:02 6 PATENT. THAT MEANS THAT CISCO GRANTS ARISTA THE RIGHT TO USE  
09:32:04 7 THE PATENT BUT COULD GRANT IT TO OTHERS AS WELL.  
09:32:07 8 Q. OKAY. SO LET'S GO TO -- WAS THERE A PARTICULAR APPROACH  
09:32:10 9 OR MODEL THAT YOU USE AS PART OF THAT REASONABLE ROYALTY  
09:32:14 10 ANALYSIS?  
09:32:14 11 A. YES. SO I FOCUSED ON THE COST APPROACH.  
09:32:21 12 WE HEARD FROM DR. JEFFAY THAT THERE WERE SUBSTANTIAL  
09:32:24 13 BENEFITS TO THE PATENT. AND THE FACT THAT THERE ARE  
09:32:26 14 SUBSTANTIAL BENEFITS TO THE PATENT TELLS US THAT ARISTA HAS A  
09:32:29 15 REAL, REAL WILLINGNESS PAY TO USE THE PATENTED TECHNOLOGY.  
09:32:36 16 HOWEVER, WE ALSO LEARNED FROM DR. JEFFAY THAT ARISTA HAS  
09:32:40 17 ACCESS TO SOME POSSIBLE DESIGN-AROUND OPPORTUNITIES. THOSE ARE  
09:32:45 18 WAYS IN WHICH ARISTA CAN DESIGN AROUND THE PATENTED TECHNOLOGY  
09:32:55 19 WITHOUT INFRINGING.  
09:32:56 20 A COMMONLY USED APPROACH TO CONSIDER PATENT DAMAGES IS TO  
09:33:00 21 CONSIDER THE COST APPROACH. AND THE COST APPROACH IS THE IDEA  
09:33:04 22 THAT WE CAN EXAMINE THE COSTS REQUIRED TO CONSTRUCT OR DO THAT  
09:33:11 23 DESIGN-AROUND, THEN CONSTRUCT THAT ALTERNATIVE TECHNOLOGY.  
09:33:15 24 AND THE IMPORTANT THING HERE IS THAT IF ARISTA HAS ACCESS  
09:33:23 25 TO A FULLY COMMERCIALLY VIABLE ALTERNATIVE TO THE PATENTED

09:33:26 1 TECHNOLOGY, WHICH IS NOT NECESSARILY THE CASE HERE, BUT WE DO  
09:33:32 2 HAVE A DESIGN AROUND, THAT ARISTA WILL ONLY PAY UP TO THE COST  
09:33:37 3 OF DESIGNING AROUND THE PATENT IN THAT LICENSE.  
09:33:41 4 SO IN THE LICENSE AGREEMENT, ARISTA IS WILLING TO PAY THE  
09:33:44 5 COST THEY AVOID TO DESIGN AROUND THE PATENT.  
09:33:49 6 Q. SO IF WE LOOK AT THAT ANALYSIS ON SLIDE 36, CAN YOU WALK  
09:33:54 7 THE JURY THROUGH THE NUMBERS THAT YOU ARRIVED AT WHEN YOU WERE  
09:33:59 8 CONSIDERING THE COST THAT IT WOULD TAKE FOR ARISTA TO TAKE OUT  
09:34:02 9 THE PATENTED FEATURES FROM ITS OPERATING SYSTEM?  
09:34:04 10 A. OKAY. SO AS DR. JEFFAY TESTIFIED ON FRIDAY, HE WAS ASKED  
09:34:11 11 ABOUT WHAT WOULD BE REQUIRED IN TERMS OF HUMANS TO DESIGN  
09:34:17 12 AROUND THE PATENTED TECHNOLOGY. AND HE TESTIFIED THAT IT WOULD  
09:34:22 13 TAKE 20 ENGINEERS AT LEAST SIX MONTHS TO DESIGN AROUND THE  
09:34:28 14 PATENTED TECHNOLOGY.  
09:34:29 15 AND SO I WILL USE THAT INFORMATION FROM DR. JEFFAY AS AN  
09:34:34 16 INPUT TO CALCULATING THE COST OF DESIGNING AROUND THE PATENT.  
09:34:43 17 Q. SO THE INPUTS TO YOUR CALCULATION WAS THERE WERE 20  
09:34:46 18 ENGINEERS AT ARISTA THAT COULD HAVE WORKED ABOUT SIX MONTHS,  
09:34:49 19 MAYBE SIX MONTHS TO A YEAR, TO TAKE OUT THE FEATURES THAT HAVE  
09:34:52 20 BEEN ACCUSED OF INFRINGING THE '526 PATENT?  
09:34:58 21 A. EXACTLY.  
09:34:59 22 Q. SO WHEN YOU DO THAT ANALYSIS, WHAT NUMBER DID YOU COME UP  
09:35:02 23 WITH AS THE COST FOR DESIGNING AROUND THE '526 PATENT FOR  
09:35:05 24 ARISTA?  
09:35:05 25 A. OKAY. SO I CAME TO A CALCULATION OF 2 TO \$2.2 MILLION AS

09:35:11 1 THE TOTAL COST.

09:35:12 2 WHERE THAT CAME FROM WAS I USED PUBLIC DATA AND SOME

09:35:19 3 SALARY DATA PRODUCED IN THE CASE TO GET THE COST PER ENGINEER

09:35:22 4 PER YEAR AND THAT INCLUDES BOTH THEIR COMPENSATION AND THINGS

09:35:25 5 LIKE BENEFITS.

09:35:26 6 AND THEN I TOOK THAT COST PER ENGINEER PER YEAR AND I

09:35:33 7 MULTIPLIED THAT BY THE NUMBER OF ENGINEERS REQUIRED FOR A HALF

09:35:36 8 A YEAR, AND THAT COMES TO \$2.2 MILLION HERE.

09:35:40 9 Q. NOW JUST TO BE CLEAR DR. CHEVALIER, YOU ARE NOT SAYING

09:35:46 10 THAT ARISTA WOULD HAVE A COMMERCIALLY VIABLE PRODUCT AFTER THE

09:35:49 11 DESIGN-AROUND, THAT'S NOT YOUR OPINION, CORRECT?

09:35:53 12 A. SO DR. JEFFAY HAS SAID THAT THIS WILL NOT BE A

09:35:56 13 COMMERCIALLY ACCEPTABLE PRODUCT. I AM, NONETHELESS, USING THIS

09:36:04 14 DESIGN-AROUND COST IN MY COAST APPROACH. SO IT'S CLEARLY AN

09:36:09 15 UNDERESTIMATE OF ARISTA'S WILLINGNESS TO PAY.

09:36:12 16 Q. SO COULD YOU WALK US THROUGH SOME OF THE GEORGIA PACIFIC

09:36:15 17 FACTORS AT A VERY HIGH LEVEL TO SEE WHETHER ANY OF THEM REALLY

09:36:19 18 HAD AN IMPACT ON YOUR DAMAGES ANALYSIS?

09:36:21 19 A. OKAY. SO COURTS HAVE STIPULATED THAT DAMAGES SHOULD BE

09:36:28 20 CALCULATED CONSIDERING EACH OF THESE GEORGIA PACIFIC FACTORS.

09:36:31 21 AND I DID CONSIDER EACH OF THESE OF GEORGIA PACIFIC FACTORS IN

09:36:35 22 COMING UP WITH MY DAMAGES.

09:36:36 23 A NUMBER OF THEM ARE NOT RELEVANT TO THIS CASE OR NEUTRAL

09:36:40 24 TO THIS CASE -- OR HAVE A NEUTRAL IMPACT ON THE DAMAGES.

09:36:43 25 FOR EXAMPLE, THE FIRST TWO HAVE TO DO WITH PRIOR EXISTING

09:36:50 1 LICENSE AGREEMENTS FOR THE PATENTED TECHNOLOGIES OR PATENTED  
09:36:55 2 RELATED TECHNOLOGIES. AND IN THIS CASE THERE ARE NOT ANY  
09:36:57 3 EXISTING LICENSING AGREEMENTS.  
09:36:59 4 THERE ARE A NUMBER OF FACTORS HERE WHICH WOULD HAVE  
09:37:03 5 SUGGESTED PUSHING UP MY DAMAGES CALCULATION.  
09:37:05 6 SO FOR EXAMPLE, FACTOR FIVE IS THE COMMERCIAL RELATIONSHIP  
09:37:08 7 OF THE LICENSOR OR THE LICENSEE. THAT IS TYPICALLY UNDERSTOOD  
09:37:11 8 TO MEAN THAT WHEN A COMPANY IS LICENSING A DIRECT COMPETITOR,  
09:37:17 9 IT WILL TYPICALLY EXPECT A LARGER PAYMENT THAN IF IT'S JUST  
09:37:21 10 LICENSING AN UNRELATED FIRM.  
09:37:23 11 NONETHELESS, DESPITE THOSE UPWARD PRESSURES, I CONCLUDED  
09:37:28 12 THAT THE OUTCOME OF THE HYPOTHETICAL NEGOTIATION WOULD LEAD TO  
09:37:30 13 TOTAL DAMAGES OF 2 TO \$2.2 MILLION.  
09:37:33 14 Q. OKAY. AND THAT'S FOR THE ONE PATENT THAT CISCO IS  
09:37:36 15 ASSERTING IN THIS CASE, CORRECT?  
09:37:37 16 A. CORRECT.  
09:37:38 17 Q. AND SO LOOKING AT THE LAST SLIDE OF YOUR DAMAGES  
09:37:45 18 PRESENTATION, CAN YOU SUMMARIZE FOR THE JURY THE ULTIMATE  
09:37:48 19 CONCLUSIONS YOU HAVE WITH RESPECT TO BOTH COPYRIGHT  
09:37:52 20 INFRINGEMENT AS WELL AS PATENT INFRINGEMENT DAMAGES AT THIS  
09:37:54 21 POINT IN THE CASE?  
09:37:54 22 A. OKAY. SO THE PATENT INFRINGEMENT DAMAGES, I WILL START  
09:37:58 23 DOWN THERE BECAUSE THAT'S STRAIGHTFORWARD.  
09:38:00 24 THE TOTAL PATENT INFRINGEMENT DAMAGES ARE 2 TO  
09:38:03 25 \$2.2 MILLION. I HAVE ALSO CONCLUDED THAT THE APPROPRIATE LOST

09:38:07 1 PROFITS DAMAGES THROUGH MARCH 2016 ARE \$311 TO \$335 MILLION.

09:38:15 2 AND THEN YOU WILL RECALL THERE IS THE SEPARATE COMPONENT

09:38:19 3 OF DAMAGES WHICH IS THE INFRINGER'S PROFITS DISGORGEMENT. AND

09:38:27 4 HERE, AGAIN, MY BURDEN IS TO ONLY PROVIDE THE REVENUES, AND

09:38:30 5 THOSE REVENUES ARE \$1.3 BILLION.

09:38:36 6 Q. SO THE TWO NUMBERS AT THE TOP, THEY GO TO THE COPYRIGHTED

09:38:42 7 PART OF THE CASE, AND THEY ARE \$311 TO \$335 MILLION FOR LOST

09:38:47 8 PROFITS DAMAGES TO CISCO. AND THEN IN TERMS OF REVENUES

09:38:50 9 SUBJECT TO DISGORGEMENT ANALYSIS, THAT'S \$1.3 BILLION, THAT'S

09:38:55 10 JUST THE COPYRIGHT SIDE OF THE CASE, CORRECT?

09:38:57 11 A. CORRECT.

09:38:57 12 Q. AND THEN FOR THE PATENT SIDE OF THE CASE, THE PATENT

09:39:00 13 DAMAGES THAT YOU CALCULATED WAS \$2 TO \$2.2 MILLION; IS THAT

09:39:05 14 CORRECT?

09:39:05 15 A. CORRECT.

09:39:05 16 Q. OKAY.

09:39:06 17 MR. PAK: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO

09:39:08 18 PASS THE WITNESS.

09:39:09 19 THE COURT: THANK YOU.

09:39:11 20 MR. SILBERT, CROSS-EXAMINATION?

09:39:14 21 **CROSS-EXAMINATION**

09:39:17 22 MR. SILBERT:

09:39:17 23 Q. GOOD MORNING.

09:39:19 24 A. GOOD MORNING.

09:39:22 25 Q. YOU PREPARED EXPERT REPORTS IN THIS CASE; RIGHT?

09:39:25 1 A. RIGHT.

09:39:26 2 Q. AND IN THOSE EXPERT REPORTS YOU SET FORTH YOUR OPINIONS

09:39:31 3 AND THE BASIS FOR YOUR OPINIONS, CORRECT?

09:39:33 4 A. CORRECT.

09:39:33 5 Q. AND YOU WERE CERTAINLY CAREFUL IN PREPARING FOR EXPERT

09:39:37 6 REPORTS; RIGHT?

09:39:38 7 A. YES.

09:39:38 8 Q. AND YOU STILL STAND BY, TODAY, WHAT YOU SAID IN THOSE

09:39:43 9 EXPERT REPORTS, CORRECT?

09:39:44 10 A. YES.

09:39:44 11 Q. OKAY. AND DID YOU RECEIVE A BINDER?

09:39:56 12 A. I SEE EXHIBITS.

09:39:58 13 MR. VAN NEST: GIVE US JUST A MOMENT.

09:40:00 14 MR. SILBERT: I'M SORRY, I JUMPED THE GUN.

09:40:02 15 THE WITNESS: OKAY.

09:40:11 16 MR. SILBERT: MY APOLOGIES.

09:40:12 17 Q. ONE OF THE THINGS THAT YOU DISCUSSED IN YOUR EXPERT

09:40:16 18 REPORTS WAS LOST PROFITS DAMAGES ON CISCO'S COPYRIGHT CLAIM;

09:40:21 19 RIGHT?

09:40:21 20 A. RIGHT.

09:40:22 21 Q. AND THAT'S SOMETHING THAT YOU ALSO TESTIFIED ABOUT HERE

09:40:27 22 TODAY AND ON FRIDAY, CORRECT?

09:40:29 23 A. CORRECT.

09:40:29 24 Q. NOW IN YOUR EXPERT REPORTS, YOU HAD THREE SCENARIOS FOR

09:40:33 25 LOST PROFITS COPYRIGHT DAMAGES; RIGHT?

09:40:33 1 A. YES.

09:40:35 2 Q. AND LET'S LOOK, IF WE CAN, AT EXHIBIT 4 TO YOUR JUNE 24,

09:40:43 3 2016, EXPERT REPORT. YOU RECOGNIZE THIS, DR. CHEVALIER, AS A

09:40:50 4 DOCUMENT YOU PREPARED?

09:40:51 5 A. YES.

09:40:51 6 Q. THIS IS AN EXHIBIT TO YOUR EXPERT REPORT; RIGHT?

09:40:54 7 A. YES.

09:40:54 8 Q. AND WHAT YOU ARE PRESENTING HERE ARE YOUR THREE SCENARIOS

09:40:59 9 FOR COPYRIGHT LOST PROFITS DAMAGES, CORRECT?

09:41:01 10 A. CORRECT.

09:41:01 11 Q. AND YOU EXPLAINED WITH MR. PAK THAT REASON WE SEE TWO

09:41:08 12 VERSIONS OF THE NUMBERS, ONE THAT SAYS CREHAN DATA AND ONE THAT

09:41:14 13 SAYS DELL'ORO DATA, IS BECAUSE YOU LOOKED AT MARKET SHARE FROM

09:41:20 14 TWO DIFFERENT SOURCES AND IT DIFFERED A LITTLE BIT AND YOU DID

09:41:21 15 THE CALCULATIONS FOR EACH OF THEM SEPARATELY; RIGHT?

09:41:25 16 A. RIGHT.

09:41:25 17 Q. IF WE LOOK AT WHAT YOU CALLED SCENARIO 1 FOR LOST PROFITS

09:41:30 18 DAMAGES IN YOUR EXPERT REPORT, THE RANGE THERE, IF YOU LOOK AT

09:41:35 19 THE TOTAL COLUMN ON THE RIGHT, WHAT YOU CAME UP WITH FOR

09:41:39 20 SCENARIO 1 IS \$45 MILLION, ROUGHLY WITH THE CREHAN DATA, AND

09:41:45 21 WITH THE DELL'ORO DATA IT WAS ABOUT \$42.6 MILLION; RIGHT?

09:41:50 22 A. RIGHT.

09:41:50 23 Q. AND THEN FOR YOUR SCENARIO 2, WHAT YOU CALLED SCENARIO 2,

09:41:55 24 YOU CAME UP WITH \$165 MILLION ROUGHLY, WITH THE CREHAN DATA,

09:42:02 25 AND \$153 MILLION, ROUGHLY, WITH THE DELL'ORO DATA, CORRECT?

09:42:07 1 A. CORRECT.

09:42:07 2 Q. AND THEN YOUR SCENARIO THREE IS THE ONE WHERE YOU RANGED

09:42:12 3 BETWEEN 334 TO 310; RIGHT?

09:42:15 4 A. CORRECT.

09:42:16 5 Q. AND SCENARIO 3, THAT'S THE ONLY ONE YOU TALKED ABOUT IN

09:42:19 6 COURT WITH MR. PAK; RIGHT?

09:42:21 7 A. YES.

09:42:22 8 Q. NOW I WANT TO TALK ABOUT THE DIFFERENCE BETWEEN THESE

09:42:25 9 DIFFERENT SCENARIOS.

09:42:26 10 SO FIRST OF ALL, IF YOU FOUND IN YOUR REVIEW OF THE ENTIRE

09:42:33 11 RECORD IN THIS CASE, ANY EVIDENCE THAT ANY PARTICULAR CUSTOMER

09:42:38 12 HAD A PREFERENCE FOR A CISCO-LIKE CLI, YOU PUT THAT CUSTOMER IN

09:42:42 13 EITHER SCENARIO 1 OR 2; RIGHT.

09:42:44 14 A. SO IN SCENARIO 1 AND SCENARIO 2, YES, I USED THE

09:42:51 15 INCOMPLETE RECORD OF CUSTOMER COMMUNICATIONS THAT I OBTAINED.

09:42:55 16 AND THEN USED THAT TO ALLOCATE CUSTOMERS, IF I HAD VERY

09:42:59 17 SPECIFIC DATA ABOUT SPECIFIC CUSTOMERS, I ALLOCATED THOSE TO

09:43:02 18 THOSE SCENARIOS.

09:43:04 19 AND THEN -- YES. SO THEN OF COURSE, IF THEY ARE NOT HERE

09:43:10 20 ELIGIBLE FOR LOST PROFITS DAMAGES, THEY WOULD MOVE OVER TO THE

09:43:15 21 DISGORGEMENT; RIGHT.

09:43:17 22 SO THE SCENARIO WITH THE MOST LOST PROFITS DAMAGES HAS THE

09:43:21 23 LEAST DISGORGEMENT.

09:43:22 24 Q. I DON'T WANT TO GET AHEAD OF YOU HERE --

09:43:25 25 A. OKAY.

09:43:25 1 Q. FOR EXAMPLE, YOU PRESENTED SLIDES TO MR. PAK ON FRIDAY AND  
09:43:30 2 YOU PRESENTED A SNIPPET FROM AN E-MAIL HERE OR DOCUMENT THERE  
09:43:36 3 THAT SAID THINGS LIKE, KEY SELLING POINTS, FAMILIAR CLI, OR  
09:43:40 4 WORDS TO THAT EFFECT.

09:43:42 5 YOU RECALL WALKING THROUGH THAT EVIDENCE WITH MR. PAK;  
09:43:44 6 RIGHT?

09:43:44 7 A. I DO.

09:43:45 8 Q. EVERY SINGLE ONE OF THOSE CUSTOMERS THAT YOU PRESENTED  
09:43:48 9 SOME INFORMATION LIKE THAT FOR, IS EITHER IN SCENARIO 1 OR  
09:43:53 10 SCENARIO 2. BECAUSE THAT'S -- THEY ARE ONE OF THE CUSTOMERS  
09:43:56 11 THAT YOU FOUND IN THE RECORD, SOME PARTICULAR EVIDENCE FOR THAT  
09:44:00 12 CUSTOMER, THAT YOU THOUGHT SUGGESTED THAT THEY PREFERRED A  
09:44:04 13 CISCO-LIKE CLI; RIGHT?

09:44:05 14 A. RIGHT. SO VERY SPECIFIC EVIDENCE TO THOSE CUSTOMERS,  
09:44:08 15 EXACTLY.

09:44:09 16 Q. AND THE DIFFERENCE THEN -- WELL, FIRST OF ALL, SCENARIOS 1  
09:44:13 17 AND 2 BUILD ON EACH OTHER, CORRECT?

09:44:16 18 A. CORRECT.

09:44:17 19 Q. SO SCENARIOS 1 AND 2 CONTAIN A TOTAL OF 30 CUSTOMERS IN  
09:44:21 20 THEM; RIGHT?

09:44:21 21 A. RIGHT.

09:44:22 22 Q. SO THOSE ARE THE CUSTOMERS THAT YOU FOUND IN YOUR REVIEW  
09:44:24 23 OF THE RECORD, A TOTAL OF 30 CUSTOMERS, YOU FOUND SOME DOCUMENT  
09:44:30 24 SOMEWHERE THAT SUGGESTED THAT THEY PREFERRED A CISCO-LIKE CLI;  
09:44:35 25 RIGHT?

09:44:35 1 A. IN MY REVIEW OF THE -- IN MY REVIEW OF THE INCOMPLETE  
09:44:42 2 RECORD OF THOSE CUSTOMERS, I FOUND SOME DOCUMENTS THAT  
09:44:45 3 SUGGESTED STRONGLY THAT THEY HAD A PREFERENCE FOR THE  
09:44:48 4 CISCO-LIKE OR CISCO CLI.  
09:44:49 5 Q. AND THERE ARE 15 SUCH CUSTOMERS IN WHAT YOU CALLED  
09:44:53 6 SCENARIO 1, THAT'S YOUR ROUGHLY -- LET'S CALL IT \$45 MILLION  
09:44:58 7 SCENARIO; RIGHT?  
09:44:58 8 A. YES.  
09:44:59 9 Q. AND THEN THERE'S 30 CUSTOMERS IN SCENARIO 2, CORRECT?  
09:45:03 10 A. YES.  
09:45:03 11 Q. AND THE 30 CUSTOMERS IN SCENARIO 2 INCLUDE THE 15 IN  
09:45:08 12 SCENARIO 1 AND THEN AN ADDITIONAL 15; RIGHT?  
09:45:11 13 A. RIGHT.  
09:45:12 14 Q. OKAY. AND THE DIFFERENCE BETWEEN SCENARIOS 1 AND 2 IS  
09:45:17 15 THAT YOU BELIEVE THAT THE EVIDENCE IS STRONGER FOR THE 15  
09:45:23 16 CUSTOMERS IN SCENARIO 1 TO SHOW THAT THEY REALLY DO PREFER A  
09:45:28 17 CISCO-LIKE CLI; RIGHT?  
09:45:30 18 A. SO IN SCENARIO 1, I HAVE MORE SPECIFIC EVIDENCE THAN IN  
09:45:36 19 SCENARIO 2.  
09:45:37 20 Q. IN FACT, WHAT YOU TESTIFIED, WASN'T IT, IS THAT YOU  
09:45:40 21 BELIEVE THE "STRONGEST EVIDENTIARY RECORD" IS FOR THE CUSTOMERS  
09:45:47 22 THAT YOU PUT IN SCENARIO 1, THOSE 15 CUSTOMERS; RIGHT?  
09:45:50 23 A. THE STRONGEST EVIDENTIARY RECORD FOR THE SPECIFIC  
09:45:53 24 CUSTOMERS; RIGHT.  
09:45:55 25 Q. AND THEN THE CUSTOMERS IN SCENARIO 2, THERE'S SOME

09:45:59 1 EVIDENCE, BUT IT'S LESS STRONG THAN FOR THE CUSTOMERS IN  
09:46:04 2 SCENARIO 1; RIGHT?

09:46:05 3 A. SO FOR SCENARIO 2, WE HAVE LESS INFORMATION FOR SCENARIO 2  
09:46:11 4 ABOUT THE SPECIFIC CUSTOMER OF THAT TYPE.

09:46:13 5 Q. AND IN FACT, NOT ONLY LESS IN QUANTITY, BUT THE EVIDENCE  
09:46:16 6 YOU HAVE FOR THE CUSTOMERS IN SCENARIO 2, IN YOUR VIEW, IS LESS  
09:46:20 7 STRONG, SOMEWHAT -- RELATIVE TO SCENARIO 1, IT'S NOT AS  
09:46:23 8 PERSUASIVE, YOU BELIEVE IS THE EVIDENCE FOR THE CUSTOMERS IN  
09:46:27 9 SCENARIO 1; RIGHT?

09:46:28 10 A. I THINK PERSUASIVE IS NOT THE RIGHT WORD, IN THAT IT'S  
09:46:33 11 LESS COMPLETE.

09:46:34 12 FOR EXAMPLE, WE MIGHT SEE RESPONSE TO AN RFP THAT CONTAINS  
09:46:39 13 LANGUAGE ABOUT THE CLI. AND IT'S, YOU KNOW, IT'S DIFFICULT TO  
09:46:43 14 TELL EXACTLY WHAT CONVERSATIONS PRECEDED THEM.

09:46:46 15 Q. OKAY. WELL, I WANT TO TALK TO YOU MORE ABOUT SOME OF THIS  
09:46:50 16 EVIDENCE, BUT LET ME FIRST ASK YOU, YOUR ROLE HERE IS TO BE AN  
09:46:55 17 INDEPENDENT EXPERT; RIGHT?

09:46:56 18 A. RIGHT.

09:46:57 19 Q. AND YOU ARE SUPPOSED TO MAKE A NEUTRAL EVALUATION OF ALL  
09:47:03 20 THE EVIDENCE THAT YOU RECEIVE AND REVIEW, CORRECT?

09:47:05 21 A. CORRECT.

09:47:06 22 Q. YOU ARE NOT HERE TO JUST BE AN ADVOCATE FOR CISCO,  
09:47:12 23 CORRECT?

09:47:12 24 A. CORRECT.

09:47:12 25 Q. AND I TAKE IT YOU AGREE THAT IF THE JURY CONCLUDES THAT

09:47:17 1 YOU DID NOT MAKE A NEUTRAL EVALUATION OF THE EVIDENCE THEN THE

09:47:24 2 JURY SHOULD DISCOUNT ANY WEIGHT THAT THEY GIVE TO YOUR

09:47:27 3 TESTIMONY; RIGHT?

09:47:28 4 A. RIGHT.

09:47:28 5 Q. SO LET'S TALK ABOUT SOME OF THESE CUSTOMERS THAT YOU PUT

09:47:31 6 INTO SCENARIO 1. AND THAT'S THE -- I'M SORRY, THE RANGES ARE

09:47:36 7 TOO HARD FOR ME, SO I'M GOING TO COLLAPSE THEM INTO SOMETHING

09:47:40 8 CLOSE OR TOWARDS THE TOP END, IF YOU PREFER THAT.

09:47:43 9 SCENARIO 1 IS YOUR, ROUGHLY, \$45 MILLION SCENARIO, FAIR

09:47:49 10 ENOUGH?

09:47:49 11 A. SO I JUST WANT TO BE CLEAR THAT IS THE \$45 MILLION IN LOST

09:47:53 12 PROFITS DAMAGES SCENARIO, NOT THE \$45 MILLION IN TOTAL DAMAGES.

09:47:56 13 Q. WE ARE TALKING ABOUT LOST PROFITS.

09:47:58 14 A. OKAY.

09:47:58 15 Q. YOUR LOST PROFITS SCENARIO 1, YOUR ROUGHLY \$45 MILLION

09:48:05 16 SCENARIO. NOW ROUGHLY TWO-THIRDS OF ALL OF THAT COMES FROM ONE

09:48:08 17 SINGLE CUSTOMER; RIGHT?

09:48:10 18 A. I THINK THAT'S RIGHT.

09:48:12 19 Q. AND THAT CUSTOMER IS FACEBOOK; RIGHT?

09:48:14 20 A. CORRECT.

09:48:14 21 Q. SO FACEBOOK ALONE, UNDER YOUR DAMAGES ANALYSIS, THE WAY

09:48:20 22 YOU SHOWED APPLYING CISCO'S MARKET SHARE -- EXCUSE ME, CISCO'S

09:48:26 23 PROFIT MARGIN TO WHAT CISCO'S REVENUES WOULD HAVE BEEN IF THEY

09:48:30 24 MADE THE SALE INSTEAD OF ARISTA, UNDER THAT LOST PROFITS

09:48:33 25 ANALYSIS YOU DID, FACEBOOK, ALONE, ADDS UP TO \$30 MILLION

09:48:37 1 ROUGHLY FOR CISCO; RIGHT?

09:48:39 2 A. WELL, LET'S BE CAREFUL, BECAUSE IN THE SCENARIO 3, I

09:48:46 3 PRESENTED FACEBOOK WOULD ACTUALLY ONLY ACCOUNT FOR --

09:48:50 4 FACEBOOK'S SPECIFIC REVENUES WOULD ACCOUNT FOR LESS IN SCENARIO

09:48:53 5 3 THAN IT DOES IN SCENARIO 1.

09:48:55 6 Q. OKAY. IN SCENARIO 1, FACEBOOK ACCOUNTS FOR ROUGHLY

09:49:00 7 \$30 MILLION OF THE \$45 MILLION; RIGHT?

09:49:03 8 A. THAT SOUNDS ABOUT RIGHT.

09:49:04 9 Q. OKAY. AND YOUR ASSERTION THERE IS THAT IF ARISTA DID NOT

09:49:11 10 HAVE AN INFRINGING CLI, FACEBOOK WOULD NOT HAVE BOUGHT ARISTA

09:49:15 11 SWITCHES, AND INSTEAD IT WOULD HAVE BOUGHT FROM CISCO, CORRECT?

09:49:21 12 A. CORRECT.

09:49:22 13 Q. YOUR ASSERTION OF FACEBOOK IS THEY ARE NOT GOING TO BUY A

09:49:25 14 SWITCH IF IT DOESN'T HAVE A CLI THAT IT INFRINGING CISCO'S

09:49:31 15 COPYRIGHT; RIGHT?

09:49:32 16 A. RIGHT.

09:49:32 17 Q. AND NOW I WANT TO LOOK AT THE EVIDENCE YOU CITED. IN YOUR

09:49:42 18 EXPERT REPORT TO SUPPORT THAT ASSERTION, YOU CITED ONE E-MAIL;

09:49:46 19 RIGHT?

09:49:46 20 A. I THINK THERE'S -- I CAN'T REMEMBER IF IT'S CITED IN MY

09:49:53 21 EXPERT REPORT, I THINK IT IS. ONE E-MAIL, PLUS DEPOSITION

09:49:59 22 TESTIMONY.

09:49:59 23 Q. LET'S LOOK AT THE E-MAIL YOU CITED WHICH IS EXHIBIT 229

09:50:03 24 WHICH IS IN EVIDENCE. AND THIS IS AN E-MAIL FROM MARK FOSS AT

09:50:14 25 ARISTA TO TWO PEOPLE AT FACEBOOK AT THE TIME; RIGHT?

09:50:16 1 A. YES.

09:50:16 2 Q. YOU SHOWED AN EXCERPT OF THIS E-MAIL ON A SLIDE DURING

09:50:19 3 YOUR DIRECT TESTIMONY WITH MR. PAK, CORRECT?

09:50:22 4 A. YES.

09:50:22 5 Q. AND MR. FOSS TALKS ABOUT THE CLI THERE, HE SAYS IN THE

09:50:28 6 SECOND PARAGRAPH, "AS I MENTIONED TO DAN LAST NIGHT, THE CLI

09:50:32 7 COMMANDS ON OUR SWITCH ARE IDENTICAL TO CISCO IOS, SO THERE

09:50:36 8 SHOULD BE NO LEARNING CURVE TO GET IT CONFIGURED;" RIGHT?

09:50:40 9 A. CORRECT.

09:50:40 10 Q. AND YOUR CONCLUSION, BASED ON THAT, IS THAT FACEBOOK WOULD

09:50:43 11 NOT HAVE BOUGHT ANY SWITCHES FROM ARISTA IF THEY DID NOT

09:50:49 12 INFRINGE CISCO'S COPYRIGHTS; RIGHT?

09:50:51 13 A. SO MY ASSERTION BASED ON THAT, PLUS THE DEPOSITION

09:50:56 14 TESTIMONY OF MR. SADANA, WHO TESTIFIED THAT ARISTA WOULD HAVE

09:51:03 15 HAD VERY FEW CUSTOMERS BUT FOR THE CLI, INCLUDING, HE

09:51:10 16 EXPRESSED, INTIMACY WITH ALL OF ARISTA'S LARGE ACCOUNTS FROM

09:51:14 17 THE BEGINNING, THOSE TWO -- THOSE -- THE BACKDROP OF THE

09:51:21 18 DEPONENT TESTIMONY PLUS THIS, LEAD ME TO CONCLUDE THAT FACEBOOK

09:51:24 19 WOULD NOT HAVE PURCHASED BUT FOR THE INFRINGING CLI.

09:51:29 20 Q. WE ARE GOING TO TALK ABOUT MR. SADANA'S TESTIMONY, I

09:51:32 21 PROMISE YOU.

09:51:33 22 NOW, YOU KNOW -- YOU SAT THROUGH MR. SADANA'S EARLIER

09:51:38 23 TESTIMONY IN THIS CASE; RIGHT?

09:51:39 24 A. I DID.

09:51:39 25 Q. AND YOU KNOW HE'S GOING TO TESTIFY AGAIN IN ARISTA'S CASE;

09:51:42 1 RIGHT?

09:51:42 2 A. YES.

09:51:43 3 Q. AND YOU KNOW THAT MR. SADANA SAID THAT WHEN THIS E-MAIL

09:51:46 4 WAS SENT, NO BUSINESS WAS ACTUALLY DONE WITH FACEBOOK UNTIL

09:51:51 5 SOME TWO YEARS LATER; RIGHT?

09:51:52 6 A. YES; THOUGH IN HIS DEPOSITION, HE DID TESTIFY THAT THEY

09:51:56 7 WERE IN CONTINUOUS CONVERSATIONS WITH FACEBOOK OVER THE 2008 TO

09:52:01 8 2011.

09:52:01 9 Q. ALL RIGHT. YOU ALSO KNOW THAT HE TESTIFIED THAT THE TWO

09:52:06 10 INDIVIDUALS WHO ARE NAMED AS RECIPIENTS ON THIS E-MAIL WEREN'T

09:52:10 11 EVEN AT FACEBOOK BY THE TIME THEY MADE A SALE TO FACEBOOK;

09:52:18 12 RIGHT?

09:52:18 13 A. YES.

09:52:18 14 Q. AND YOU ARE ALSO AWARE THAT FACEBOOK DEVELOPED ITS OWN

09:52:21 15 OPERATING SYSTEM ON SWITCHES IT RUNS IN ITS NETWORK?

09:52:25 16 A. I UNDERSTAND THAT.

09:52:26 17 Q. YOU'VE HEARD OF THE FBOSS OPERATING SYSTEM; RIGHT?

09:52:29 18 A. YES.

09:52:29 19 Q. YOU HAVE NO REASON TO BELIEVE THAT FACEBOOK IS INFRINGING

09:52:34 20 CISCO'S COPYRIGHTS BY COPYING CISCO'S CLI ON TO FACEBOOK'S OWN

09:52:40 21 SWITCH OPERATING SYSTEM, DO YOU?

09:52:41 22 A. NO.

09:52:47 23 Q. AND YOU ALSO KNOW THAT FACEBOOK USES JUNIPER JUNOS IN ITS

09:52:52 24 NETWORK; RIGHT?

09:52:54 25 A. YES, I DO.

09:52:55 1 Q. OKAY. AND SO YOU ARE CERTAINLY AWARE OF EVIDENCE THAT

09:52:59 2 FACEBOOK IS WILLING TO USE SWITCHES THAT DO NOT HAVE A CLI THAT

09:53:03 3 RESEMBLES CISCO'S CLI; RIGHT?

09:53:06 4 A. I KNOW THAT FOR SOME PURPOSES, FACEBOOK IS WILLING TO USE

09:53:15 5 SWITCHES THAT DO NOT USE CISCO'S CLI.

09:53:16 6 Q. YOU ALSO REVIEWED AN RFP, THAT WAS A REQUEST FOR PROPOSAL

09:53:20 7 THAT WAS ISSUED BY FACEBOOK; RIGHT?

09:53:21 8 A. RIGHT.

09:53:22 9 Q. WOULD YOU PLEASE LOOK AT EXHIBIT 6534.

09:53:37 10 A. I DON'T GO THAT HIGH. I HAVE 629 THROUGH 4745 AND 31

09:53:47 11 THROUGH 626 -- OH, IT'S THIS ONE, I'M SORRY.

09:53:50 12 Q. I'M SORRY. I'M JUST AS CONFUSED AS YOU ARE.

09:53:54 13 A. NO, I SHOULD HAVE REALIZED THAT. TELL ME THE NUMBER

09:53:59 14 AGAIN, PLEASE.

09:54:00 15 Q. 6534.

09:54:09 16 A. YES.

09:54:09 17 Q. THIS IS A DOCUMENT THAT YOU CONSIDERED IN FORMING YOUR

09:54:12 18 OPINIONS IN THIS CASE; RIGHT?

09:54:13 19 A. RIGHT.

09:54:13 20 Q. AND YOU RECOGNIZE THIS TO BE THE RFP ISSUED BY FACEBOOK TO

09:54:21 21 ARISTA AND MAYBE OTHERS, ALONG WITH AN E-MAIL AT THE TOP?

09:54:25 22 A. YES.

09:54:27 23 MR. SILBERT: YOUR HONOR, I OFFER 6534.

09:54:30 24 MR. PAK: NO OBJECTION, YOUR HONOR.

09:54:31 25 THE COURT: IT WILL BE ADMITTED.

09:54:31 1 (DEFENDANT'S EXHIBIT 6534 WAS ADMITTED INTO EVIDENCE.)

09:54:33 2 MR. SILBERT:

09:54:33 3 Q. IF YOU LOOK AT THE COVER E-MAIL UP AT THE TOP THERE, YOU

09:54:38 4 SEE THIS IS AN E-MAIL BETWEEN -- FROM SOMEONE NAMED

09:54:44 5 SUSIE CAULFIELD AT ARISTA TO ANSHUL SADANA AND OTHERS.

09:54:47 6 DO YOU SEE THAT?

09:54:50 7 A. YES.

09:54:50 8 Q. YOU SEE THE DATE IS MAY OF 2011; RIGHT?

09:54:56 9 A. YES.

09:54:56 10 Q. AND THE FIRST SENTENCE THERE, MS. CAULFIELD WRITES, SHE

09:55:00 11 WRITES, "HI ALL, FACEBOOK HAS SHARED THEIR REQUIREMENTS DOC AND

09:55:04 12 WOULD LIKE IT BACK BY COB ON WEDNESDAY;" RIGHT?

09:55:06 13 A. RIGHT.

09:55:07 14 Q. THEN IF YOU TURN A FEW PAGES INTO THE EXHIBIT, YOU SEE

09:55:14 15 WHAT'S A SPREADSHEET LISTING REQUIREMENTS?

09:55:17 16 A. YES.

09:55:18 17 Q. TO LOOK AT A FEW OF THESE, IF YOU LOOK AT THE TOP THERE ON

09:55:21 18 ENVIRONMENTALS, THEY LIST, THEY WANT BACK TO FRONT AIRFLOW,

09:55:25 19 THEY WANT FRONT TO BACK AIRFLOW, THEY WANT HOT SWAPPABLE FANS,

09:55:30 20 ET CETERA, THERE'S A BUNCH OF REQUIREMENTS THEY LIST UNDER THE

09:55:33 21 ENVIRONMENTALS; RIGHT?

09:55:34 22 A. CORRECT.

09:55:35 23 Q. AND IF YOU THEN LOOK DOWN TO "SWITCHING PERFORMANCE," YOU

09:55:38 24 SEE MORE REQUIREMENTS THERE, THEY HAVE REQUIREMENTS FOR

09:55:42 25 THROUGHPUT AND CAPACITY, MAXIMUM ARP ENTRIES AND SO FORTH;

09:55:48 1 RIGHT?

09:55:48 2 A. RIGHT.

09:55:49 3 Q. IF YOU GO DOWN TO THEIR LAYER 2 PROTOCOL SUPPORT, THEY

09:55:53 4 LIST THE LAYER 2 PROTOCOLS THEY WANT THE SWITCH TO SUPPORT?

09:55:57 5 A. RIGHT.

09:55:58 6 Q. BELOW THAT THEY LIST LAYER 3 PROTOCOLS THEY WANT THE

09:56:01 7 SWITCH TO SUPPORT; RIGHT?

09:56:02 8 A. RIGHT.

09:56:02 9 Q. AND WE WON'T GO THROUGH ALL OF THIS, BUT IF YOU GO ALL THE

09:56:06 10 WAY DOWN TO THE END OF THE DOCUMENT TO THE MANAGEMENT, IT'S A

09:56:09 11 LITTLE BIT -- SORRY, IT'S NOT -- IT'S SOMEWHERE IN THE MIDDLE

09:56:18 12 WHERE IT SAYS "MANAGEMENT," HERE THEY LIST A BUNCH OF FEATURES

09:56:22 13 THAT THEY WANT FOR MANAGEMENT OF THE SWITCH; RIGHT?

09:56:24 14 A. YES.

09:56:24 15 Q. THEY LIST TACACS PLUS; RIGHT?

09:56:26 16 A. RIGHT.

09:56:26 17 Q. THEY LIST SYSLOG; RIGHT?

09:56:29 18 A. YES.

09:56:31 19 Q. NETCONF; RIGHT?

09:56:33 20 A. YES.

09:56:34 21 Q. THEY LIST A NUMBER OF FEATURES UNDER MANAGEMENT; RIGHT?

09:56:36 22 A. RIGHT.

09:56:36 23 Q. NOWHERE IN THIS DOCUMENT OF WHERE FACEBOOK LISTS ITS

09:56:39 24 REQUIREMENTS DOES IT SAY ANYTHING ABOUT ANY KIND OF CLI THAT IT

09:56:42 25 WANTS; RIGHT?

09:56:43 1 A. CORRECT.

09:56:43 2 Q. OKAY. THANK YOU. YOU CAN PUT THAT ASIDE.

09:56:50 3 YOU ALSO, IN YOUR REVIEW OF EVIDENCE IN THIS CASE, YOU

09:56:53 4 LOOKED AT INTERNAL CISCO DOCUMENTS; RIGHT.

09:56:55 5 A. I DID.

09:56:56 6 Q. AND WOULD YOU PLEASE LOOK AT EXHIBIT 5382. DO YOU HAVE

09:57:16 7 THAT IN FRONT OF YOU?

09:57:18 8 A. I DO.

09:57:19 9 Q. THIS IS AN E-MAIL CHAIN BETWEEN INDIVIDUALS AT CISCO;

09:57:21 10 RIGHT, DREW PLETCHER AND OTHERS?

09:57:23 11 A. YES.

09:57:24 12 Q. AND THIS IS -- YOU SEE THAT THE -- YOU KNOW THE SUBJECT OF

09:57:31 13 THIS INVOLVES FACEBOOK; RIGHT?

09:57:32 14 A. YES.

09:57:33 15 Q. AND THIS IS ONE OF THE DOCUMENTS THAT YOU CONSIDERED IN

09:57:35 16 FORMING YOUR OPINIONS IN THIS CASE; RIGHT?

09:57:37 17 A. YES.

09:57:38 18 MR. SILBERT: YOUR HONOR, I OFFER 5382.

09:57:40 19 MR. PAK: NO OBJECTION, YOUR HONOR.

09:57:41 20 THE COURT: IT WILL BE ADMITTED.

09:57:41 21 (DEFENDANT'S EXHIBIT 5382 WAS ADMITTED INTO EVIDENCE.)

09:57:43 22 MR. SILBERT:

09:57:43 23 Q. IF YOU WOULD LOOK DOWN, PLEASE, AT THE LOWER PARAGRAPH ON

09:57:46 24 THAT -- THAT KIND OF LARGE PARAGRAPH. I WANT TO DIRECT YOUR

09:57:50 25 ATTENTION TO THE SENTENCE THAT BEGINS, FOUR LINES FROM THE

09:57:53 1 BOTTOM THAT STARTS, "THIS IS A MESSAGE."

09:57:56 2 IT SAYS, "THIS IS A MESSAGE THAT FACEBOOK IS DRIVING WITH

09:58:00 3 NUMEROUS NETWORKING COMPANIES THAT THEY ARE TALKING WITH. THIS

09:58:03 4 LIST OF VENDORS INCLUDES ARISTA, 3COM, CUMULOUS, FORCE10,

09:58:09 5 BROCADE, JUNIPER, ET CETERA."

09:58:12 6 DO YOU SEE THAT?

09:58:13 7 A. YES.

09:58:14 8 Q. NOW FIRST OF ALL, I TAKE IT YOUR BELIEF IS THAT EVERY

09:58:17 9 SINGLE ONE OF THOSE COMPANIES INFRINGES CISCO'S COPYRIGHT;

09:58:21 10 RIGHT?

09:58:21 11 A. I THINK I HAVE NO OPINION ON THAT TOPIC, OF COURSE, THAT

09:58:30 12 WOULD REQUIRE AN EXPERT OPINION. BUT, YOU KNOW, I UNDERSTAND

09:58:32 13 THERE ARE OTHER SWITCH VENDORS IN THE MARKETPLACE WITH -- THAT

09:58:36 14 MAY OR MAY NOT INFRINGE CISCO'S CLI.

09:58:38 15 Q. YOU SAY THEY MAY OR MAY NOT INFRINGE, WHATEVER THEY DO,

09:58:45 16 CERTAINLY BASED ON THIS CISCO INTERNAL E-MAIL, FACEBOOK IS

09:58:49 17 WILLING TO TALK TO THEM ABOUT THEIR NETWORK SWITCHES; RIGHT?

09:58:52 18 A. YES.

09:58:53 19 Q. NOW THE E-MAIL GOES ON, "FACEBOOK'S POSITION IS THAT CISCO

09:59:02 20 IS BEHIND THE CURVE AND IS ON TARGET TO BECOME IRRELEVANT; NOT

09:59:08 21 ONLY IN THE FACEBOOK DATA CENTER, BUT IN THE MAJORITY OF, IF

09:59:12 22 NOT ALL BUT COMMERCIAL DATA CENTERS, AS ALL THE OTHER VENDORS

09:59:16 23 ARE AT VARIOUS STAGES UP TO BEING WELL AHEAD OF CISCO."

09:59:25 24 DO YOU SEE THAT LANGUAGE?

09:59:26 25 A. YES.

09:59:27 1 Q. AND THAT IS LANGUAGE YOU REVIEWED IN FORMING YOUR OPINION  
09:59:29 2 IN THIS CASE, RIGHT?  
09:59:30 3 A. YES. AND INDEED, I DID HAVE DISCUSSIONS WITH SOME CISCO  
09:59:33 4 EXECUTIVES, NOT ABOUT IN MAIL SPECIFICALLY, BUT ABOUT BOTH THE  
09:59:35 5 NATURE OF THE RFP PROCESS AND WHEN REQUIREMENTS ARE IN IT, AND  
09:59:38 6 ALSO THE NATURE OF E-MAILS -- NOT E-MAILS, BUT THE QUESTIONS  
09:59:46 7 ABOUT CISCO BEING AHEAD OR BEHIND.  
09:59:48 8 Q. I SEE. SO WHEN YOU FOUND A STATEMENT IN AN E-MAIL THAT  
09:59:52 9 SEEMED TO UNDERMINE, MAYBE CISCO'S POSITION THAT IT WOULD HAVE  
09:59:57 10 SOLD SWITCHES TO FACEBOOK IF ARISTA DIDN'T, YOU WENT AND YOU  
10:00:01 11 GOT OTHER INFORMATION AND YOU DECIDED YOU WEREN'T GOING TO GIVE  
10:00:04 12 THAT THAT MUCH CREDENCE?  
10:00:06 13 A. I THINK THAT'S A MISCHARACTERIZATION. I HAD LONG  
10:00:11 14 CONVERSATIONS WITH CISCO EXECUTIVES ABOUT THE RFP PROCESS,  
10:00:13 15 ABOUT THEIR INTERNAL ASSESSMENT OF THEIR OWN CAPABILITIES.  
10:00:19 16 AND AS I TESTIFIED BEFORE, A CUSTOMER WOULD NOT BUY A  
10:00:29 17 SWITCH FROM ARISTA RATHER THAN CISCO BECAUSE OF THE CLI, THE  
10:00:34 18 QUESTION IS THE "BUT-FOR."  
10:00:36 19 Q. RIGHT.  
10:00:36 20 AND IN ONE OF THE QUESTIONS IN THE "BUT-FOR" WORLD IS  
10:00:41 21 WHETHER IF THEY DIDN'T BUY FROM ARISTA BECAUSE THEY SIMPLY HAD  
10:00:44 22 TO HAVE THE INFRINGING CLI, OTHERWISE THEY WEREN'T GOING TO BUY  
10:00:47 23 THE SWITCH. IF THEY DIDN'T BUY FROM ARISTA, WOULD THEY HAVE  
10:00:50 24 BOUGHT FROM CISCO OR SOME OTHER VENDOR; RIGHT?  
10:00:52 25 A. EXACTLY. AND THAT'S WHY WE HAVE THAT MARKET SHARE

10:00:56 1 ADJUSTMENT THAT ALLOWS THE REVENUES TO FLOW TO ALL THE OTHER  
10:01:03 2 COMPETITORS, NOT JUST TO CISCO.

10:01:05 3 Q. RIGHT.

10:01:06 4 AND YOU READ THIS LANGUAGE THAT SAID, "FACEBOOK'S POSITION  
10:01:09 5 IS THAT CISCO IS BEHIND THE CURVE AND IS ON TARGET TO BECOME  
10:01:14 6 IRRELEVANT, NOT ONLY IN THE FACEBOOK DATA CENTER, BUT IN THE  
10:01:17 7 MAJORITY OF, IF NOT ALL BUT COMMERCIAL DATA CENTERS, AS ALL THE  
10:01:20 8 OTHER VENDORS ARE AT VARIOUS STAGES UP TO BEING WELL AHEAD OF  
10:01:24 9 CISCO;" RIGHT?

10:01:25 10 A. I'M SORRY, I DIDN'T HEAR WHAT THE QUESTION WAS.

10:01:28 11 Q. YOU READ THAT LANGUAGE IN FORMING YOUR OPINIONS?

10:01:31 12 A. YES, I READ THAT LANGUAGE.

10:01:33 13 Q. AND AGAIN, JUST TO BE CLEAR, IF THE JURY TOOK WHAT YOU  
10:01:36 14 CALLED SCENARIO 1 AND THEY REMOVED JUST FACEBOOK, ONLY FACEBOOK  
10:01:40 15 FROM SCENARIO 1, THAT WOULD TAKE THE NUMBER DOWN TO ROUGHLY  
10:01:44 16 \$15 MILLION; RIGHT?

10:01:45 17 A. YES. THAT WOULD MAKE THAT -- WELL, LET'S BE CLEAR ON WHAT  
10:01:53 18 THE NUMBER IS. WHEN YOU SAY THE NUMBER, I ASSUME YOU MEAN LOST  
10:01:57 19 PROFITS DAMAGES BECAUSE THE EFFECT ON TOTAL DAMAGES WOULD, OF  
10:01:59 20 COURSE, BE MUCH SMALLER.

10:02:00 21 Q. OKAY. LET'S MOVE TO SCENARIO 2. AND IN SCENARIO 2 YOU  
10:02:08 22 INCLUDE 15 MORE COMPANIES; RIGHT, THAN YOU HAD IN SCENARIO 1?

10:02:11 23 A. YES.

10:02:11 24 Q. AND ONE OF THOSE COMPANIES IS MICROSOFT, CORRECT?

10:02:15 25 A. RIGHT.

10:02:15 1 Q. AND MICROSOFT, YOU KNOW IS A VERY SIGNIFICANT CUSTOMER TO  
10:02:18 2 ARISTA; RIGHT?  
10:02:19 3 A. CORRECT.  
10:02:19 4 Q. AND IN FACT, JUST MICROSOFT AND FACEBOOK COMBINED MAKE UP  
10:02:28 5 ROUGHLY 75 PERCENT OF THE -- OF YOUR NUMBER IN SCENARIO 2;  
10:02:35 6 RIGHT?  
10:02:35 7 A. YES.  
10:02:35 8 Q. OKAY. NOW YOU DISCUSSED A FEW DOCUMENTS FROM MICROSOFT TO  
10:02:42 9 SUPPORT YOUR OPINION THAT MICROSOFT WOULD NOT HAVE PURCHASED  
10:02:45 10 ARISTA SWITCHES IF ARISTA DID NOT INFRINGE CISCO'S CLI; RIGHT?  
10:02:48 11 A. RIGHT.  
10:02:49 12 Q. OKAY. AND LET'S LOOK AT EXHIBIT 650. THIS IS ONE OF THE  
10:03:02 13 E-MAILS THAT YOU DISCUSSED TO SUPPORT YOUR OPINION REGARDING  
10:03:07 14 MICROSOFT; RIGHT?  
10:03:08 15 A. RIGHT.  
10:03:09 16 MR. SILBERT: YOUR HONOR, I OFFER EXHIBIT 650.  
10:03:12 17 MR. PAK: NO OBJECTION, YOUR HONOR.  
10:03:13 18 THE COURT: IT WILL BE ADMITTED.  
10:03:15 19 (DEFENDANT'S EXHIBIT 650 WAS ADMITTED INTO EVIDENCE.)  
10:03:15 20 BY MR. SILBERT:  
10:03:16 21 Q. AND THIS IS AN E-MAIL BETWEEN ARISTA EMPLOYEES; RIGHT?  
10:03:21 22 A. YES.  
10:03:21 23 Q. YOU AGREE THAT THIS E-MAIL IS FAIRLY TECHNICAL AND  
10:03:28 24 SOMEWHAT DIFFICULT FOR A NONTECHNICAL PERSON, AND SPECIFICALLY  
10:03:31 25 FOR YOU TO UNDERSTAND WHAT THEY ARE TALKING ABOUT; RIGHT?

10:03:33 1 A. RIGHT.

10:03:34 2 Q. NOW, AND YOU DID NOT ASK CISCO'S TECHNICAL EXPERT, TO

10:03:40 3 CONFIRM THAT THIS DOCUMENT ACTUALLY INDICATES THAT MICROSOFT

10:03:44 4 HAS A PREFERENCE FOR A CISCO-LIKE CLI; RIGHT?

10:03:47 5 A. I HAD NUMEROUS CONVERSATIONS WITH CISCO TECHNICAL

10:03:52 6 EXPERT -- WITH THE CISCO TECHNICAL EXPERT, I DON'T THINK

10:03:56 7 SPECIFICALLY ABOUT THIS E-MAIL, BUT ABOUT CERTAIN LANGUAGE AND

10:04:00 8 TERMS TO DEFINE THEM SO I COULD UNDERSTAND THIS.

10:04:02 9 Q. YOU NOW KNOW, DON'T YOU, THIS E-MAIL DOES NOT CONCERN THE

10:04:06 10 CLI?

10:04:07 11 A. MY UNDERSTANDING IS THAT THIS E-MAIL CONCERNS MORE THAN

10:04:15 12 THE CLI.

10:04:15 13 Q. YOU NOW UNDERSTAND THAT THIS E-MAIL DOES NOT INDICATE A

10:04:18 14 PREFERENCE BY MICROSOFT FOR A CISCO-LIKE CLI?

10:04:22 15 A. I HONESTLY DO NOT RECALL THAT SPECIFIC TESTIMONY.

10:04:34 16 Q. OKAY. YOU ALSO LOOKED AT AN RFP FROM MICROSOFT; RIGHT?

10:04:44 17 A. I DID.

10:04:44 18 Q. AND THAT ONE ACTUALLY HAD A LINE ITEM FOR FAMILIAR

10:04:47 19 COMMAND-LINE INTERFACE IN THE RFP, CORRECT?

10:04:49 20 A. YES, IT HAD A COUPLE OF LINES RELATED TO CLI ONE THAT

10:04:55 21 MENTIONED THE FAMILIAR CLI.

10:04:56 22 Q. RIGHT.

10:04:57 23 AND WOULD YOU LOOK, PLEASE, AT EXHIBIT 6509.

10:05:22 24 DO YOU RECOGNIZE THAT AS THE COVER E-MAIL AND ATTACHMENT

10:05:24 25 WITH THE MICROSOFT RFP?

10:05:25 1 I'M GOING TO TRY TO SOLVE THE SMALL PRINT PROBLEM IN A  
10:05:28 2 SECOND, BUT MY QUESTION NOW IS, YOU RECOGNIZE --  
10:05:31 3 A. I RECOGNIZE THIS DOCUMENT.  
10:05:34 4 MR. SILBERT: SO WHAT I WOULD LIKE TO DO, YOUR HONOR,  
10:05:35 5 IS OFFER 6509, AND AT THE SAME TIME OFFER 6511, WHICH IS THE  
10:05:42 6 NATIVE COPY OF THE SPREADSHEET ATTACHED TO 6509, WHICH IS GOING  
10:05:48 7 TO BE A LOT EASIER FOR US TO READ.  
10:05:50 8 MR. PAK: NO OBJECTION, YOUR HONOR.  
10:05:51 9 THE COURT: ALL RIGHT. THEY WILL BOTH BE ADMITTED.  
10:05:51 10 (DEFENDANT'S EXHIBIT 6509 AND 6511 WERE ADMITTED INTO  
10:05:53 11 EVIDENCE.)  
10:05:53 12 BY MR. SILBERT:  
10:05:54 13 Q. SO IF YOU LOOK FIRST AT 6509 AT THE COVER E-MAIL, YOU WILL  
10:05:58 14 SEE THIS IS AN E-MAIL FROM ARIFF PREMJI AT ARISTA NETWORKS TO  
10:06:04 15 ADAM SWEENEY AND ANSHUL SADANA?  
10:06:08 16 A. RIGHT.  
10:06:08 17 Q. HE SAYS AT THE TOP, FOR COMPLETENESS HERE, THE MS  
10:06:12 18 SPREADSHEETS; RIGHT?  
10:06:13 19 A. YES.  
10:06:13 20 Q. AND I WANT TO SWITCH NOW TO 6511 AND LOOK AT THE NATIVE  
10:06:19 21 VERSION SO THAT WE WILL BE ABLE TO READ IT, AND LOOK AT THE  
10:06:23 22 LINE WE WERE TALKING ABOUT.  
10:06:24 23 NOW FIRST OF ALL, IT'S A LITTLE BIT HARD TO READ EVEN ON  
10:06:28 24 THE NATIVE, BUT YOU UNDERSTAND THAT MICROSOFT ENTERED POINTS.  
10:06:38 25 YOU SEE 300, 600, 500, 900, 1,000, ET CETERA THERE; RIGHT.

10:06:43 1 A. YES.

10:06:44 2 Q. AND YOU UNDERSTAND THAT MICROSOFT WAS RANKING THE

10:06:51 3 IMPORTANCE OF FEATURE OF THESE FEATURES; RIGHT?

10:06:52 4 A. I UNDERSTAND THE POINTS RELATED TO THE IMPORTANCE OF THE

10:06:55 5 FEATURES.

10:06:55 6 Q. AND THEY PROVIDED A KEY AT THE BACK THAT EXPLAINED WHAT

10:06:58 7 EACH NUMBER RANGE CORRESPONDED TO, IN THEIR VIEW, IN TERMS OF

10:07:06 8 IMPORTANCE?

10:07:27 9 A. YES, I REMEMBER THAT.

10:07:28 10 Q. SO DO YOU SEE THERE THAT THERE'S AN ITEM "FAMILIAR

10:07:33 11 COMMAND-LINE INTERFACE" THAT MICROSOFT ENTERED IN ITS

10:07:35 12 SPREADSHEET?

10:07:38 13 A. YES.

10:07:38 14 Q. AND THE RANK POINTS THAT MICROSOFT ASSIGNED TO FAMILIAR

10:07:43 15 COMMAND-LINE INTERFACE WAS 100 POINTS; RIGHT?

10:07:44 16 A. YES. THOUGH THAT IS NOT THE ONLY REFERENCE TO THE CLI IN

10:07:48 17 THE DOCUMENT.

10:07:48 18 Q. AND IF WE NOW GO LOOK AT THE KEY TO SEE WHAT THAT

10:07:55 19 CORRESPONDS TO. SO HERE -- AND AGAIN IT'S NOT THE EASIEST

10:08:01 20 THING TO READ, BUT YOU SEE 1 TO 599 POINTS. WHAT THAT

10:08:07 21 CORRESPONDS TO IS INFORMATIONAL REQUESTS, FEATURES WE HAVE NO

10:08:12 22 PARTICULAR PLANS TO USE; RIGHT?

10:08:14 23 A. I DO SEE THAT.

10:08:15 24 Q. SO YOU UNDERSTAND THAT MICROSOFT SAID IN THIS RFP THAT A

10:08:19 25 FAMILIAR COMMAND-LINE INTERFACE WAS A FEATURE OF LOW IMPORTANCE

10:08:25 1 AND A FEATURE IT HAS NO PARTICULAR PLANS TO USE?

10:08:28 2 A. AGAIN, THAT'S NOT THE ONLY REFERENCE TO THE COMMAND-LINE

10:08:31 3 INTERFACE IN THE DOCUMENT, BUT YES, I SEE THAT THAT MAPS OUT

10:08:36 4 THAT WAY.

10:08:36 5 Q. RIGHT. WHAT YOU ARE REFERRING TO, AND WE LOOKED AT IT

10:08:39 6 BRIEFLY, WHAT YOU ARE REFERRING TO IS THERE'S A SEPARATE ENTRY

10:08:42 7 IN THE SPREADSHEET THAT JUST SAYS CLI; RIGHT?

10:08:46 8 A. YES.

10:08:46 9 Q. AND SO THEY WANTED A CLI, THEY GAVE THAT MORE POINTS;

10:08:50 10 RIGHT?

10:08:50 11 A. UH-HUH.

10:08:51 12 Q. BUT -- THEY GAVE THAT MORE POINTS THAN THE FAMILIAR ONE;

10:08:55 13 RIGHT?

10:08:55 14 A. YES.

10:08:55 15 Q. AND SO THEY HAD ONE ENTRY FOR CLI THAT THEY GAVE A CERTAIN

10:08:59 16 NUMBER OF POINTS TO, CORRECT?

10:09:02 17 A. RIGHT.

10:09:02 18 Q. AND THEY HAD A SEPARATE ENTRY FOR FAMILIAR COMMAND-LINE

10:09:06 19 INTERFACE?

10:09:07 20 A. YES.

10:09:07 21 Q. AND THAT'S THE ONE WHERE THEY ASSIGNED THE NUMBER OF

10:09:10 22 POINTS THAT CORRESPONDED TO LOW IMPORTANCE AND FEATURE, WE HAVE

10:09:13 23 NO PARTICULAR PLANS TO USE; RIGHT?

10:09:15 24 A. RIGHT.

10:09:16 25 Q. OKAY. YOU CAN PUT THAT ASIDE.

10:09:21 1 AGAIN, WITH RESPECT TO MICROSOFT, YOU ALSO CONSIDERED  
10:09:24 2 INTERNAL CISCO DOCUMENTATION; RIGHT.  
10:09:26 3 A. YES.  
10:09:27 4 Q. I WANT TO ASK YOU, PLEASE, TO LOOK AT EXHIBIT 5495. THIS  
10:09:45 5 IS A DOCUMENT THAT SAYS "CHAMBERS ONE-TO-ONE PHONE BRIEFING  
10:09:48 6 MICROSOFT" ON TOP.  
10:09:49 7 THIS IS A DOCUMENT THAT YOU CONSIDERED IN FORMING YOUR  
10:09:51 8 OPINIONS IN THIS CASE; RIGHT?  
10:09:52 9 A. RIGHT.  
10:09:55 10 Q. AND IT RELATES TO MICROSOFT, CORRECT?  
10:09:57 11 A. YES.  
10:10:03 12 MR. SILBERT: YOUR HONOR, I OFFER 5495.  
10:10:06 13 MR. PAK: NO OBJECTION, YOUR HONOR.  
10:10:07 14 THE COURT: IT WILL BE ADMITTED.  
10:10:09 15 (DEFENDANT'S EXHIBIT 5495 WAS ADMITTED INTO EVIDENCE.)  
10:10:09 16 BY MR. SILBERT:  
10:10:09 17 Q. AND YOU WILL SEE THE TITLE WHICH IS IN THAT GRAY BOX IS  
10:10:12 18 UNFORTUNATELY PRETTY HARD TO READ BECAUSE IT'S GRAYED OUT. DO  
10:10:17 19 YOU SEE ORGANIZATION NAME "MICROSOFT;" RIGHT?  
10:10:19 20 A. YES.  
10:10:20 21 Q. AND IT SAYS THE DATE, TIME, LOCATION, IT SAYS TBD, PREFER  
10:10:26 22 NO LATER THAN MARCH 11, 2011; RIGHT?  
10:10:29 23 A. YES.  
10:10:29 24 Q. AND WHERE IT SAYS, "CHAMBERS ONE-TO-ONE PHONE BRIEFING  
10:10:35 25 MICROSOFT," YOU UNDERSTAND THAT JOHN CHAMBERS WAS THE CEO OF

10:10:39 1 CISCO AT THIS TIME; RIGHT?

10:10:40 2 A. YES.

10:10:47 3 Q. AND I WANT TO LOOK AT SOME THINGS HE'S TOLD IN THIS

10:10:50 4 BRIEFING.

10:10:51 5 SO WHAT MR. CHAMBERS IS TOLD IN THIS BRIEFING, FIRST

10:10:57 6 FOR -- THE FIRST BULLET POINT UNDER JOHN'S AND CISCO'S

10:11:00 7 OBJECTIVES WAS, "BLOCK ARISTA FROM GAINING A FIRST PRODUCTION

10:11:03 8 DEPLOYMENT AT MICROSOFT IN WHAT IS CALLED THE SPINE, A

10:11:10 9 STRATEGIC LAYER IN THE MEGASCALE DATA CENTER?"

10:11:14 10 A. YES.

10:11:14 11 Q. AND THEN UNDER "BACKGROUND," THAT LITTLE BULLET POINT, IT

10:11:18 12 SAYS, "MICROSOFT SEARCH IS ON THE VERGE OF DEPLOYING A

10:11:23 13 \$2 MILLION INVESTMENT WITH ARISTA WHICH WOULD REPRESENT A

10:11:25 14 SIGNIFICANT BEACHHEAD. SEARCH IS THE CANARY IN THE COAL MINE

10:11:31 15 AZURE, OFFICE 365 AND OTHER ONLINE PROPERTIES WILL FOLLOW.

10:11:35 16 ONLINE IS A \$100 MILLION ANNUAL FRANCHISE FOR CISCO."

10:11:41 17 DO YOU SEE THAT?

10:11:42 18 A. YES.

10:11:42 19 Q. YOU UNDERSTAND MR. CHAMBERS WAS BEING TOLD IN 2011 THAT HE

10:11:48 20 NEEDED TO BLOCK ARISTA FROM GAINING A FIRST PRODUCTION

10:11:51 21 DEPLOYMENT; RIGHT?

10:11:52 22 A. THAT'S WHAT IT SAYS.

10:11:53 23 Q. OKAY. AND THEN IF WE COULD PLEASE GO TO THE NEXT PAGE.

10:12:08 24 IF YOU LOOK AT THE BULLET POINT THERE, WHAT MR. CHAMBERS

10:12:11 25 WAS TOLD IS, "ARISTA IS OUTPERFORMING CISCO ON PRICE, PRODUCT,

10:12:17 1 ROAD MAP AND VISION. BASED ON MULTIPLE MISSED CISCO ROAD MAP

10:12:22 2 COMMITMENTS IN THE DATA CENTER, MICROSOFT FEELS LESS RISK WITH

10:12:28 3 UNPROVEN ARISTA;" RIGHT?

10:12:31 4 A. YES, I SEE THAT.

10:12:32 5 Q. NOW YOU KNOW THIS IS A CISCO DOCUMENT THAT WAS PROVIDED TO

10:12:35 6 US IN DISCOVERY; RIGHT?

10:12:36 7 A. YES.

10:12:36 8 Q. YOU UNDERSTAND THAT THIS STATEMENT "ARISTA IS

10:12:40 9 OUTPERFORMING CISCO ON PRICE, PRODUCT, ROAD MAP AND VISION,"

10:12:50 10 THAT'S WHAT CISCO'S CEO JOHN CHAMBERS WAS BEING TOLD BY HIS OWN

10:12:54 11 EMPLOYEES IN 2011; RIGHT?

10:12:57 12 A. YES, THAT'S EXACTLY THE KIND OF THING YOU WOULD EXPECT IN

10:13:01 13 THIS KIND OF DOCUMENT.

10:13:02 14 Q. OKAY. WELL, LET'S LOOK AT ANOTHER ONE. YOU CAN PUT THAT

10:13:11 15 ASIDE.

10:13:12 16 WOULD YOU PLEASE LOOK AT EXHIBIT 5219. THIS IS AN E-MAIL

10:13:31 17 EXCHANGE BETWEEN CISCO EMPLOYEES, CORRECT?

10:13:33 18 A. OKAY.

10:13:35 19 Q. DO YOU SEE THAT EXHIBIT 5219 IS AN E-MAIL EXCHANGE BETWEEN

10:13:40 20 CISCO EMPLOYEES?

10:13:40 21 A. YES.

10:13:41 22 Q. AND IT CONCERNS MICROSOFT; RIGHT?

10:13:43 23 A. YES.

10:13:43 24 Q. AND THIS WAS ONE OF THE DOCUMENTS THAT YOU CONSIDERED IN

10:13:45 25 FORMING YOUR OPINIONS IN THIS CASE; RIGHT?

10:13:48 1 A. YES.

10:13:48 2 Q. OKAY.

10:13:49 3 MR. SILBERT: I OFFER 5219, YOUR HONOR.

10:13:51 4 MR. PAK: NO OBJECTION, YOUR HONOR.

10:13:52 5 THE COURT: IT WILL BE ADMITTED.

10:13:54 6 (DEFENDANT'S EXHIBIT 5219 WAS ADMITTED INTO EVIDENCE.)

10:13:54 7 BY MR. SILBERT:

10:13:54 8 Q. AND IF YOU LOOK, PLEASE, TO THE BOTTOM OF THE PAGE TO THE

10:13:58 9 E-MAIL FROM SONI JIANDANI AT THE BOTTOM.

10:14:14 10 YOU UNDERSTAND THAT MS. JIANDANI WAS A VERY HIGH RANKING

10:14:18 11 EXECUTIVE AT CISCO; RIGHT?

10:14:20 12 A. YES.

10:14:20 13 Q. AND IF YOU LOOK WHERE HE SAYS, "WHEN WE LOST," STARTING AT

10:14:27 14 THE THIRD LINE -- "WHEN WE LOST AZURE LAST TIME TO ARISTA" --

10:14:32 15 LET ME STOP THERE.

10:14:33 16 AZURE, YOU UNDERSTAND, IS A MICROSOFT CLOUD SERVICE;

10:14:36 17 RIGHT?

10:14:36 18 A. CORRECT.

10:14:37 19 Q. "WHEN WE LOST AZURE LAST TIME TO ARISTA, CISCO OFFERED

10:14:41 20 THEM NEXUS 7K FOR FREE UNTIL WE WERE GOING TO SHIP FT CARDS.

10:14:47 21 MICROSOFT REFUSED THAT OFFER AND WENT WITH ARISTA."

10:14:50 22 DO YOU SEE THAT?

10:14:51 23 A. YES.

10:14:51 24 Q. THEN SHE GOES ON, "IN THE CURRENT SITUATION, OUR BIGGEST

10:14:55 25 HOPE WAS NEXUS 6004, WHICH WAS OFFERED CLOSE TO COG, WHICH WAS

10:15:02 1 ALSO DENIED BY MICROSOFT IN FAVOR OF ARISTA 7508 CHASSIS AND  
10:15:06 2 THE EQUIVALENT OF 3132."

10:15:09 3 DO YOU SEE THAT?

10:15:10 4 A. YES.

10:15:10 5 Q. NOW CLOSE TO COGS, YOU UNDERSTAND THAT TO MEAN COST OF  
10:15:15 6 GOODS SOLD?

10:15:15 7 A. YES.

10:15:18 8 Q. AND THAT MEANS MICROSOFT WAS OFFERING THIS CLOSE TO A  
10:15:21 9 PRICE WHERE THEY WOULD MAKE NO GROSS PROFIT AT ALL; RIGHT?

10:15:25 10 A. RIGHT.

10:15:25 11 Q. AND WHAT MS. JIANDANI SAYS HERE IS THAT, EVEN AT THAT  
10:15:29 12 PRICE, MICROSOFT STILL REJECTED US AND WENT WITH ARISTA?

10:15:32 13 A. FOR THIS ORDER, YES.

10:15:33 14 Q. AND IF YOU GO TO THE NEXT PAGE THERE, SHE CONTINUES, "HERE  
10:15:36 15 WE ARE ARGUING ON WHETHER THIS IS A RING FENCED DEAL IN 2013  
10:15:40 16 KNOWING THAT WE HAVE FAILED TO DELIVER CRITICAL FEATURES FOR  
10:15:45 17 MICROSOFT FOR THE LAST FIVE MONTHS OF THEM ASKING REPEATEDLY  
10:15:49 18 FOR WARM REBOOT DONE PER THEIR SPECIFICATION ON NEXUS 3064 AND  
10:15:54 19 NEXUS 3132 AND CISCO STILL NOT BEING IN A POSITION TO DELIVER  
10:16:01 20 TO THEIR SPECS.

10:16:03 21 IN THE INTERIM, ARISTA IS BUSY EXECUTING AND DELIVERING TO  
10:16:08 22 WHAT THE CUSTOMER HAD REQUESTED FIVE MONTHS AGO."

10:16:12 23 DO YOU SEE ALL OF THAT LANGUAGE?

10:16:14 24 A. YES.

10:16:14 25 Q. AND THIS IS LANGUAGE YOU CONSIDERED ALSO IN FORMING YOUR

10:16:16 1 OPINIONS FOR THIS CASE; RIGHT?

10:16:17 2 A. YES, FOR SURE.

10:16:19 3 AND THIS IS EXACTLY WHAT COMPETITIVE COMPANIES THAT ARE

10:16:22 4 INNOVATING, THIS IS THE KIND OF E-MAIL THEY SHOULD BE SENDING

10:16:27 5 EACH OTHER.

10:16:27 6 Q. OKAY. GOOD. WE ARE GOING TO TALK ABOUT INNOVATION TOO,

10:16:31 7 BUT I WANT TO TALK ABOUT YOUR RELIANCE ON THE OTHER MATERIALS

10:16:36 8 THAT YOU RELIED ON.

10:16:37 9 YOU TALKED ABOUT MR. SADANA'S TESTIMONY. YOU MENTIONED

10:16:40 10 SOME TESTIMONY FROM OR SOME STATEMENTS BY MR. DUDA; RIGHT?

10:16:43 11 A. CORRECT.

10:16:44 12 Q. NOW YOUR OPINION, AGAIN, JUST TO SET THE FRAME, IF YOU

10:16:52 13 FOUND ANY PARTICULAR EVIDENCE AT ALL IN THE RECORD THAT A

10:16:55 14 PARTICULAR CUSTOMER PREFERRED A CISCO-LIKE CLI, THOSE CUSTOMERS

10:17:00 15 ARE IN SCENARIOS 1 OR 2, YOUR SCENARIOS 1 OR 2; RIGHT?

10:17:04 16 A. I WOULDN'T SAY ANY, BUT IF I HAD SPECIFIC EVIDENCE FOR THE

10:17:07 17 SPECIFIC CUSTOMER, THEY SHOULD BE IN SCENARIO 1 AND 2.

10:17:10 18 Q. OKAY. AND THE OPINION THAT YOU EXPRESSED HERE IN COURT IS

10:17:14 19 THAT ARISTA WOULD HAVE BEEN UNABLE TO MAKE 80 PERCENT OF ALL OF

10:17:19 20 ITS SALES, HAD IT NOT INFRINGED THE COPYRIGHT -- CISCO'S

10:17:23 21 COPYRIGHTS ON CISCO'S CLI; RIGHT?

10:17:25 22 A. CORRECT.

10:17:26 23 Q. AND YOU GET THAT 80 PERCENT NUMBER, YOU GOT THAT FROM A

10:17:30 24 BLOG POST BY KEN DUDA; RIGHT?

10:17:33 25 A. THE 80 PERCENT NUMBER IS IN PART FROM THE BLOG POST OF KEN

10:17:43 1 DUDA.

10:17:43 2 Q. AND WHAT HE SAID WAS SOMETHING ALONG THE LINES OF

10:17:46 3 20 PERCENT OF OUR CUSTOMERS USE A PURE LINUX APPROACH; RIGHT?

10:17:49 4 A. HE DID SAY THAT.

10:17:50 5 Q. OKAY. AND HE ALSO SAID THAT HE DIDN'T INTEND THAT NUMBER

10:17:54 6 TO BE QUANTITATIVELY CORRECT; RIGHT?

10:17:56 7 A. ACTUALLY, WHAT HE SAID IN HIS DEPOSITION TESTIMONY WAS

10:17:59 8 THAT HE WAS NOT SURE IT WAS COMPLETELY ACCURATE, WHICH IS

10:18:04 9 WHY -- I MEAN, IT WASN'T SPECIFICALLY, HE WASN'T A HUNDRED

10:18:08 10 PERCENT SURE OF THE NUMBER.

10:18:10 11 AND SO THAT'S WHY I LOOKED AT SOME OTHER INFORMATION IN

10:18:15 12 ORDER TO USE IT AND DECIDE IT WAS, INDEED, A BIT OF A

10:18:21 13 CONSERVATIVE ESTIMATE.

10:18:22 14 Q. YOU ALSO HEARD MR. DUDA SAY THAT CLOUD CUSTOMERS, FOR

10:18:26 15 EXAMPLE, REALLY DON'T CARE ABOUT THE FAMILIARITY OF A CLI?

10:18:29 16 A. ACTUALLY, I HAVEN'T HEARD MR. DUDA SAY THAT AT ALL.

10:18:32 17 Q. DID YOU HEAR HIM TESTIFY TO THAT EFFECT IN COURT?

10:18:35 18 A. WELL, SPECIFICALLY I HEARD HIM DISCUSS THE SCRIPT WRITTEN

10:18:43 19 TO THE CLI AND THE FACT THAT THEY ARE USING THE CLI.

10:18:45 20 Q. OKAY. YOU DID TESTIFY WHEN MR. PAK WAS QUESTIONING YOU,

10:18:50 21 THAT YOU EITHER SAT THROUGH ALL OF THE TRIAL TESTIMONY OR IF

10:18:53 22 YOU DIDN'T SIT THROUGH IT, YOU READ IT; RIGHT?

10:18:55 23 A. YEAH, ABSOLUTELY.

10:18:56 24 Q. DID YOU READ THE TESTIMONY FROM MR. DUDA SAYING THAT CLOUD

10:18:59 25 CUSTOMERS, AS A RULE, DON'T CARE WHETHER OR NOT THEY HAVE A

10:19:02 1 FAMILIAR CLI?

10:19:05 2 A. SO WE COULD LOOK AT THE TESTIMONY AGAIN, I READ IT

10:19:15 3 SLIGHTLY DIFFERENTLY, AND THEN HE WENT ON TO TALK ABOUT THE

10:19:18 4 AUTOMATIVE SCRIPT AND THE USE OF CLI.

10:19:20 5 Q. OKAY. YOU ALSO TALKED ABOUT TESTIMONY FROM MR. SADANA,

10:19:23 6 RIGHT?

10:19:23 7 A. YES.

10:19:23 8 Q. AND YOU ALSO HEARD MR. SADANA TESTIFY IN COURT HERE

10:19:28 9 PREVIOUSLY, RIGHT?

10:19:28 10 A. YES, I UNDERSTAND.

10:19:29 11 Q. AND YOU UNDERSTAND HE'S GOING TO TESTIFY AGAIN; RIGHT?

10:19:31 12 A. YES.

10:19:31 13 Q. NOW THE TESTIMONY THAT YOU QUOTED FROM MEMORY ON THE

10:19:35 14 STAND, YOU KNOW THAT CAME IN A LINE OF QUESTIONS THAT CONCERNED

10:19:42 15 THE YEARS 2008 TO 2009; RIGHT?

10:19:45 16 A. THAT PARTICULAR ANSWER DID, THE ONE I MENTIONED ON THE

10:19:48 17 STAND, THOUGH HE DISCUSSED IT MORE IN THE DEPOSITION THAN THAT.

10:19:51 18 Q. WELL, HE DID.

10:19:52 19 AND YOU KNOW CERTAINLY, THAT 2008, 2009 IS NOT -- IS

10:19:57 20 BEFORE THE STATUTE OF LIMITATIONS IN THIS CASE; RIGHT?

10:19:59 21 A. YES. I DO KNOW THAT, THOUGH OF COURSE GIVEN ARISTA'S LAND

10:20:05 22 AND EXPANSE STRATEGY, ACTIONS TAKEN IN 2008 AND 2009 WILL

10:20:13 23 AFFECT SALES LATER.

10:20:13 24 Q. YOU KNOW THAT MR. SADANA ALSO SAID THAT WEB CUSTOMERS, AND

10:20:19 25 OTHER TYPES OF CUSTOMERS EXPRESS NO PARTICULAR PREFERENCE FOR

10:20:22 1 THE CLI IN HIS TESTIMONY?

10:20:25 2 A. YOU MEAN IN HIS LIVE TESTIMONY?

10:20:27 3 Q. WELL, NO I'M REFERRING TO HIS DEPOSITION TESTIMONY?

10:20:31 4 A. OKAY. SO I REMEMBER THAT HE WAS ASKED WHETHER EVEN TODAY

10:20:38 5 HE FELT THEY HAD THE FLEXIBILITY TO NOT USE THE CISCO CLI, AND

10:20:43 6 HE SAID NO.

10:20:44 7 Q. DO YOU RECALL THAT HE WAS ASKED WITH RESPECT TO WEB

10:20:46 8 CUSTOMERS, THAT YOU WERE SPEAKING WITH IN THE 2008 TO 2010 TIME

10:20:51 9 PERIOD, DID THEY EXPRESS ANY PARTICULAR PREFERENCE FOR

10:20:55 10 CISCO-LIKE CLI, AND HE GAVE THE ANSWER NO.

10:20:58 11 A. OKAY.

10:20:59 12 Q. OKAY. WE LOOKED PREVIOUSLY AT AN RFP FROM MICROSOFT;

10:21:04 13 RIGHT?

10:21:04 14 A. YES.

10:21:05 15 Q. AND IT HAD THE ENTRY FOR FAMILIAR COMMAND-LINE INTERFACE

10:21:08 16 AND IT HAD THE NUMBER CORRESPONDING TO A FEATURE WE HAVE NO

10:21:12 17 PARTICULAR PLANS TO USE; RIGHT?

10:21:13 18 A. THAT'S WHAT IT CORRESPONDED TO.

10:21:15 19 Q. WE LOOKED AT THE RFP PREVIOUSLY FROM FACEBOOK THAT DIDN'T

10:21:19 20 EVEN MENTION A CLI AT ALL; RIGHT?

10:21:21 21 A. YES.

10:21:22 22 Q. YOU UNDERSTAND THAT CLOUD DATA CENTERS ARE MASSIVELY

10:21:27 23 SCALED DATA CENTERS THAT HOUSE THOUSANDS OF SERVERS CONNECTED

10:21:31 24 BY HIGH SPEED NETWORK SWITCHES; RIGHT?

10:21:33 25 A. RIGHT.

10:21:34 1 Q. YOU RECOGNIZE THAT AS A QUOTE FROM YOUR REPORT; RIGHT?

10:21:37 2 A. RIGHT.

10:21:38 3 Q. YOU UNDERSTAND THAT CLOUD DATA CENTERS REQUIRE SIMPLER AND

10:21:40 4 MORE AUTOMATED MANAGEMENT CAPABILITIES; RIGHT?

10:21:43 5 A. RIGHT.

10:21:44 6 Q. YOU UNDERSTAND THAT AUTOMATION TOOLS AS A LAYER BETWEEN A

10:21:51 7 HUMAN OPERATOR AND THE CLI; RIGHT?

10:21:53 8 A. RIGHT.

10:21:53 9 Q. OKAY. AND YOU'VE ALSO SEEN CISCO DOCUMENTS THAT TALK

10:22:00 10 ABOUT THE CLI WITH RESPECT TO CLOUD CUSTOMERS, CORRECT?

10:22:02 11 A. YES.

10:22:03 12 Q. WOULD YOU LOOK PLEASE AT EXHIBIT 5496. YOU RECOGNIZE THIS

10:22:25 13 AS A CISCO SLIDE DECK?

10:22:30 14 A. YES.

10:22:30 15 Q. THIS IS ONE OF THE DOCUMENTS YOU CONSIDERED IN FORMING

10:22:35 16 YOUR OPINIONS IN THIS CASE?

10:22:36 17 A. RIGHT.

10:22:37 18 MR. SILBERT: YOUR HONOR, I OFFER 5496.

10:22:39 19 MR. PAK: NO OBJECTION.

10:22:39 20 THE COURT: IT WILL BE ADMITTED.

10:22:40 21 (DEFENDANT'S EXHIBIT 5496 WAS ADMITTED INTO EVIDENCE.)

10:22:40 22 BY MR. SILBERT:

10:22:41 23 Q. I WANT TO ASK YOU TO TURN TO PAGE 7, IT'S THE SLIDE WITH

10:22:44 24 THE HEADING "ARISTA COMPETITIVE WEB VIEW."

10:22:55 25 A. YES.

10:22:55 1 Q. FIRST OF ALL, IF YOU LOOK UNDER THE HEADING IN THIS CISCO  
10:23:00 2 SLIDE DECK UNDER "ARISTA COMPETITIVE VIEW" UNDER WHY THEY WIN,  
10:23:04 3 THERE'S FACTORS LISTED THERE?  
10:23:05 4 A. RIGHT.  
10:23:06 5 Q. YOU SEE THINGS LIKE "RIFLE FOCUS ON WEB MARKET, TARGETED  
10:23:11 6 VALUE PROP AND INVESTMENT," CORRECT?  
10:23:13 7 A. CORRECT.  
10:23:14 8 Q. THEN CISCO LISTED MORE OPEN OS WITH RAPID INTEGRATION OF  
10:23:18 9 THIRD PARTY APPS BUILT ON VANILLA LINUX BASE; RIGHT?  
10:23:22 10 A. RIGHT.  
10:23:22 11 Q. AND IF YOU THEN LOOK FURTHER DOWN UNDER THE HEADING  
10:23:29 12 "INVEST TO CLOSE GAP," YOU UNDERSTAND THIS IS CISCO SAYING  
10:23:32 13 HERE'S WHAT WE NEED TO INVEST IN TO CLOSE THE GAP; RIGHT?  
10:23:35 14 A. YEAH.  
10:23:36 15 Q. AND WHAT THEY WRITE IS, "NEED TO INVEST IN NX-OS  
10:23:44 16 OPERATIONAL FUNDAMENTALS."  
10:23:47 17 AND YOU UNDERSTAND NX-OS IS THE OPERATING SYSTEM?  
10:23:51 18 A. RIGHT.  
10:23:51 19 Q. THAT'S ONE OF CISCO'S SWITCH OPERATING SYSTEMS?  
10:23:53 20 A. CORRECT.  
10:23:53 21 Q. THAT'S THE OPERATING SYSTEM THAT THEY TARGET FOR DATA  
10:23:55 22 CENTERS; RIGHT?  
10:23:56 23 A. RIGHT.  
10:23:59 24 Q. AND THEN THEY GO ON TO SAY, "CLI NOT ALIGNED TO CLOUD  
10:24:10 25 AUTOMATION TOOLS?"

10:24:10 1 A. YES.

10:24:10 2 Q. NOW YOU HAD ACCESS TO ARISTA'S SALES DATA AND OTHER DATA

10:24:14 3 THAT SHOW THE PORTION OF ARISTA SALES THAT GO TO CLOUD

10:24:20 4 COMPANIES; RIGHT?

10:24:21 5 A. RIGHT.

10:24:22 6 Q. AND IN FACT, YOU AGREE THAT ARISTA PRIMARILY SERVES

10:24:37 7 CUSTOMERS OPERATING PUBLIC OR PRIVATE CLOUDS, CORRECT?

10:24:41 8 A. CORRECT.

10:24:42 9 Q. OKAY. AND IF YOU WANTED TO DETERMINE THE AMOUNT OF

10:24:47 10 ARISTA'S REVENUES THAT, FOR EXAMPLE, WENT TO CLOUD CUSTOMERS

10:24:51 11 LIKE FACEBOOK, MICROSOFT, GOOGLE, YAHOO, OTHER COMPANIES LIKE

10:24:56 12 THAT, YOU EASILY COULD HAVE DONE THAT; RIGHT?

10:25:00 13 A. YES.

10:25:00 14 Q. OKAY. LET'S TALK BRIEFLY ABOUT THE -- YOUR PATENT

10:25:09 15 OPINION.

10:25:10 16 A. OKAY.

10:25:10 17 Q. SO YOU JUST DISCUSSED THIS SLIDE WITH THE JURY; RIGHT, AND

10:25:24 18 JUST TO BE CLEAR, YOU'RE ASKING FOR \$311 TO \$335 MILLION

10:25:33 19 COPYRIGHT LOST PROFITS DAMAGES; RIGHT?

10:25:35 20 A. MY OPINION IS THAT'S WHAT IT IS, YES.

10:25:37 21 Q. OKAY. AND THEN YOU ARE NOT DONE THERE, BECAUSE YOU ARE

10:25:41 22 GOING TO COME BACK AND OPINE THE NUMBER OUGHT TO BE HIGHER AND

10:25:46 23 THAT'S WHAT THIS SECOND BLUE BOX REFERS TO FOR DISGORGEMENT?

10:25:50 24 A. WELL, SO -- YEAH. I MEAN THE -- YES, THERE WILL BE PART

10:25:54 25 OF THAT \$1.3 BILLION.

10:25:57 1 Q. AND THEN THE DARK BLUE BOX AT THE BOTTOM REPRESENTS YOUR  
10:26:06 2 PATENT DAMAGES?

10:26:07 3 A. RIGHT.

10:26:07 4 Q. AND NOW YOUR PATENT IS DIRECTED TO THE CLI; RIGHT?

10:26:11 5 A. THE PATENT IS -- PROVIDES A FUNCTIONALITY OVER THE CLI,  
10:26:15 6 YES.

10:26:15 7 Q. OKAY. AND YOUR NUMBER FOR THE PATENT IS 2 MILLION TO  
10:26:21 8 2.2 MILLION, CORRECT?

10:26:23 9 A. CORRECT.

10:26:23 10 Q. AND THAT'S BASED ON EVIDENCE AND INFORMATION YOU'VE SEEN  
10:26:26 11 IN THE CASE ABOUT A DESIGN-AROUND THAT ARISTA COULD IMPLEMENT;  
10:26:30 12 RIGHT?

10:26:30 13 A. CORRECT.

10:26:31 14 Q. AND AGAIN, I BELIEVE YOU EXPLAINED, BUT A DESIGN-AROUND IS  
10:26:34 15 JUST BASICALLY, DO WHATEVER YOU NEED TO DO TO NOT INFRINGE AND  
10:26:39 16 THEN YOU ARE DONE WITH IT; RIGHT?

10:26:40 17 A. YES.

10:26:41 18 Q. OKAY. THAT'S A TECHNICAL DEFINITION.

10:26:45 19 A. I WILL LET YOU --

10:26:47 20 Q. THANK YOU.

10:26:48 21 AND THIS 2 TO \$2.2 MILLION OPINION THAT YOU'VE OFFERED,  
10:26:54 22 THIS IS THE ONLY OPINION ON ANY ACTUAL DAMAGES NUMBER WITH  
10:26:58 23 RESPECT TO THE PATENT CASE THAT YOU'VE OFFERED; RIGHT?

10:27:00 24 A. THAT IS, YES.

10:27:03 25 Q. WOULD YOU PLEASE LOOK AT EXHIBIT 5168, WHICH IS IN YOUR

10:27:23 1 BINDER WHICH IS IN EVIDENCE. THIS IS THE CISCO SLIDE DECK

10:27:29 2 THAT -- THIS IS THE CISCO SLIDE DECK THAT WAS DISCUSSED WITH

10:27:44 3 MR. REMAKER PREVIOUSLY, IT'S CALLED "INNOVATION AT CISCO;"

10:27:47 4 RIGHT?

10:27:47 5 A. RIGHT.

10:27:48 6 Q. AND IT'S DATED SEPTEMBER 2013; RIGHT?

10:27:51 7 A. YES.

10:27:52 8 Q. AND THIS IS SOMETHING THAT YOU READ AND CONSIDERED IN

10:27:55 9 FORMING YOUR OPINIONS IN THIS CASE; RIGHT?

10:27:57 10 A. YES.

10:27:57 11 Q. IF YOU LOOK AT THE NEXT PAGE UNDER "EXECUTIVE SUMMARY,"

10:28:05 12 FOR EXAMPLE UNDER THE SECOND BULLET POINT IN THE SECOND SUB

10:28:13 13 BULLET THERE YOU READ THE STATEMENT IN THE CISCO SLIDE DECK,

10:28:16 14 "OUR ORGANIZATION AND POLICIES ARE TOO RIGID TO SUPPORT

10:28:19 15 INNOVATION;" RIGHT?

10:28:20 16 A. YES.

10:28:21 17 Q. AND THEN GOING DOWN TO THE NEXT ONE, YOU READ THE

10:28:26 18 STATEMENT "INCENTIVES AND CULTURE DON'T PROMOTE INNOVATION;"

10:28:30 19 RIGHT?

10:28:30 20 A. YES.

10:28:31 21 Q. IF YOU GO ON TWO PAGES IN -- TWO SLIDES IN, I GUESS, TO

10:28:40 22 THE HEADING, "PROBLEM STATEMENT."

10:28:42 23 THE BULLET AT BOTTOM THERE, "OUR INNOVATIVE CULTURE HAS

10:28:46 24 STALLED AND LEADERSHIP HAS NOT REACTED AS QUICKLY AS IT SHOULD

10:28:50 25 TO REIGNITE AN INNOVATIVE CULTURE ACROSS ALL LEVELS."

10:28:56 1 YOU READ THAT; RIGHT?

10:28:57 2 A. YES.

10:28:57 3 Q. AND IF YOU GO DOWN TO PAGE 15, YOU SEE THE HEADING OF THAT

10:29:04 4 SLIDE, "WE HAVE STRONG TALENT BUT LACK THE CULTURE REQUIRED TO

10:29:07 5 SUPPORT BREAKTHROUGH INNOVATION;" YOU READ THAT, CORRECT?

10:29:12 6 A. YES.

10:29:12 7 Q. IF YOU GO TO TWO MORE SLIDES IN, PAGE 17, YEAH, AND THIS

10:29:24 8 SLIDE TALKS ABOUT SIX PRIMARY INNOVATION BARRIERS.

10:29:28 9 DO YOU SEE NUMBER ONE, "WE DO NOT COMMIT RESOURCES TO

10:29:34 10 AMBITIOUS INNOVATION, MULTI-YEAR FUNDING ENGINEER'S TIME."

10:29:38 11 YOU READ THAT; RIGHT?

10:29:39 12 A. YES.

10:29:39 13 Q. NUMBER TWO, "WE HOLD OUR LEADERS ACCOUNTABLE FOR

10:29:44 14 SHORT-TERM METRICS AND LACK LONGER TERM INNOVATION METRICS."

10:29:50 15 YOU ALSO READ THAT TERM?

10:29:51 16 A. YES.

10:29:52 17 Q. NUMBER FOUR, "OUR PROCESSES AND POLICIES SLOW DOWN OUR

10:29:57 18 INNOVATION DISCOURAGE PEOPLE FROM TRYING;" YOU READ THAT,

10:30:00 19 RIGHT?

10:30:00 20 A. YES.

10:30:01 21 Q. ISN'T IT TRUE, DR. CHEVALIER, THAT CISCO'S INABILITY TO

10:30:04 22 INNOVATE IS THE MAIN REASON THAT CISCO IS LOSING OPPORTUNITIES

10:30:09 23 TO MORE INNOVATIVE COMPETITORS?

10:30:13 24 A. SO FIRST OF ALL, I THINK CISCO IS MANIFESTLY AN INNOVATIVE

10:30:20 25 COMPANY, AND BEATING ONES SELF UP ABOUT HOW INNOVATIVE ONE IS

10:30:26 1 IN INTERNAL DOCUMENTS, THAT'S WHAT YOU DO TO BE INNOVATIVE.

10:30:32 2 I THINK CERTAINLY, AS I'VE SAID BEFORE, THE CLI IS NOT A

10:30:35 3 REASON A CUSTOMER CHOOSES AN ARISTA SWITCH OVER A CISCO SWITCH

10:30:39 4 THAT, YOU KNOW, THERE ARE GOING TO BE BENEFITS THAT SPECIFIC

10:30:43 5 CUSTOMERS SEE IN SPECIFIC CASES.

10:30:47 6 CISCO CLEARLY STILL HAS A BIG MARKET SHARE AND IS CLEARLY

10:30:51 7 STILL INNOVATIVE COMPANY, BUT OF COURSE THEY ARE TRYING TO BE

10:30:54 8 BETTER.

10:30:54 9 MR. SILBERT: OKAY. NOTHING FURTHER.

10:30:58 10 THANK YOU.

10:31:00 11 THE COURT: REDIRECT FOR THIS WITNESS?

10:31:02 12 MR. PAK: YES, YOUR HONOR.

10:31:02 13 I'M GOING TO A BIT OF REDIRECT HERE, SO WOULD YOU LIKE TO

10:31:04 14 DO IT NOW OR --

10:31:04 15 THE COURT: WE WILL TAKE OUR BREAK.

10:31:02 16 MR. PAK: THANK YOU, YOUR HONOR.

10:31:06 17 THE COURT: ALL RIGHT. LET'S TAKE A 15-MINUTE BREAK.

10:33:08 18 (RECESS FROM 10:33 A.M. UNTIL 10:43 A.M.)

10:46:27 19 THE COURT: MR. PAK, YOU MAY PROCEED WITH YOUR

10:46:30 20 REDIRECT.

10:46:31 21 MR. PAK: THANK YOU, YOUR HONOR.

10:46:33 22 **REDIRECT EXAMINATION**

10:46:33 23 BY MR. PAK:

10:46:35 24 Q. GOOD MORNING, AGAIN.

10:46:36 25 A. GOOD MORNING, AGAIN.

10:46:36 1 Q. ALL RIGHT.

10:46:37 2 SO DR. CHEVALIER, I'M GOING TO ASK YOU A FEW QUESTIONS

10:46:40 3 BASED ON WHAT WE HEARD FROM MR. SILBERT TODAY.

10:46:43 4 A. SURE.

10:46:44 5 Q. SO LET'S GO BACK TO THE OPINIONS YOU PRESENTED TO THE

10:46:47 6 JURY. YOU PRESENTED A MARKET SHARE ANALYSIS; IS THAT CORRECT?

10:46:49 7 A. CORRECT.

10:46:49 8 Q. AND THAT WAS WHAT WAS CALLED SCENARIO 3 IN YOUR EXPERT

10:46:55 9 REPORT?

10:46:55 10 A. RIGHT.

10:46:55 11 Q. NOW MR. SILBERT ASKED YOU ABOUT A FEW OTHER SCENARIOS THAT

10:46:58 12 YOU HAD DEVELOPED THAT YOU DIDN'T PRESENT TO THE JURY, SCENARIO

10:47:01 13 1 AND 2; DO YOU RECALL THAT?

10:47:02 14 A. YES.

10:47:02 15 Q. AND YOU SAID SOMETHING IN YOUR CROSS-EXAMINATION, YOU SAID

10:47:07 16 THAT SCENARIOS 1 AND 2 WERE BASED ON AN INCOMPLETE RECORD.

10:47:12 17 AND CAN YOU EXPLAIN TO THE JURY WHAT YOU MEANT BY THOSE

10:47:17 18 COMMENTS AND THEN WE WILL ASK YOU A LITTLE BIT MORE ABOUT

10:47:19 19 SCENARIO 3?

10:47:20 20 A. SURE.

10:47:21 21 SO IN THE EXPERT REPORT, AS A CHECK ON MY SCENARIO 3 THAT

10:47:29 22 I PRESENTED TO YOU, I LOOKED AT SPECIFIC EVIDENCE FOR SPECIFIC

10:47:34 23 COMPANIES.

10:47:35 24 AND A CONCERN ABOUT THE EVIDENCE IN THIS CASE IS WE DON'T

10:47:38 25 HAVE EVIDENCE OF EVERY CONVERSATION. WE DON'T HAVE EVIDENCE OF

10:47:41 1 EVERY COMMUNICATION, WE DON'T HAVE -- THERE'S A LOT OF THINGS  
10:47:44 2 MISSING.

10:47:45 3 AND SO THE RECORDS THAT WE HAVE ARE KIND OF BITS AND  
10:47:48 4 PIECES FOR A SPECIFIC CUSTOMER. AND WE HAVE DIFFERENT THINGS  
10:47:52 5 FOR DIFFERENT CUSTOMERS.

10:47:53 6 Q. OKAY. SO WHY DID YOU BELIEVE THAT SCENARIOS 1 AND 2 THAT  
10:47:57 7 YOU HAD WORKED ON WAS BASED ON AN INCOMPLETE RECORD?

10:47:59 8 A. OKAY. SO BECAUSE WE DON'T HAVE RECORDS OF EVERY  
10:48:04 9 INTERACTION WITH EVERY CUSTOMER AND BECAUSE THE CONVERSATIONS  
10:48:08 10 ABOUT THE CLI AND EXPRESSIONS OF INTEREST IN THE CLI COULD  
10:48:13 11 TYPICALLY HAPPEN -- WOULD TYPICALLY HAPPEN EARLY IN THE SELLING  
10:48:16 12 PROCESS, BUT WOULD, YOU KNOW, WOULD OFTEN HAPPEN VERBALLY, THAT  
10:48:22 13 WE ARE JUST NOT ALWAYS GOING TO SEE WHEN THOSE CONVERSATIONS  
10:48:25 14 HAD TAKEN PLACE.

10:48:26 15 Q. LET'S FOCUS ON SCENARIO 3 THAT YOU DID PRESENT TO THE JURY  
10:48:29 16 THAT LOOKS AT MARKET SHARE ANALYSIS.

10:48:36 17 DOES LOOKING BACK AT SCENARIO 3 THAT YOU PRESENTED TO THE  
10:48:39 18 JURY, WHICH IS BASED ON A MARKET SHARE ANALYSIS, DOES SCENARIO  
10:48:44 19 3 SUFFER FROM THIS INCOMPLETE RECORD PROBLEM THAT YOU HAD JUST  
10:48:47 20 IDENTIFIED FOR THE OTHER TWO SCENARIOS?

10:48:50 21 A. NO, IT ACTUALLY DIDN'T BECAUSE SCENARIO 3 RELIES ON THE  
10:48:56 22 OPINIONS OF A NUMBER OF ARISTA'S TOP EXECUTIVES IN THEIR  
10:49:00 23 DEPOSITIONS, AND THEY ARE WELL-POSITIONED, ESPECIALLY LIKE  
10:49:07 24 MR. SADANA AND MS. ULLAL WHO VANISH THERE FOR A LONG TIME, TO  
10:49:12 25 LOOK OVER THE ENTIRE RECORD, THEY WOULD HAVE MEMORIES OF THOSE

10:49:14 1 CONVERSATIONS OR AT LEAST THE, YOU KNOW, SOME SUMMARY MEMORY OF  
10:49:18 2 THOSE KIND OF CONVERSATIONS, SO QUESTIONS FOR THEM ABOUT, YOU  
10:49:23 3 KNOW, HOW IMPORTANT WAS THE CLI TO CUSTOMERS, THEY WOULD  
10:49:26 4 HAVE -- THEY WOULD BE BEST POSITIONED TO ACTUALLY BE ABLE TO  
10:49:29 5 ANSWER THAT.

10:49:29 6 Q. AND WHAT'S THE ADVANTAGE OF LOOKING AT MARKET SHARE  
10:49:31 7 INFORMATION THAT YOU USED IN SCENARIO 3 IN TERMS OF LOOKING AT  
10:49:35 8 THE OVERALL INDUSTRY RATHER THAN SPECIFIC CUSTOMERS WHERE THERE  
10:49:39 9 MAY BE SOME RECORD EVIDENCE OF THOSE CONVERSATIONS?

10:49:42 10 A. SO BY MARKET SHARE, DO YOU MEAN --

10:49:47 11 Q. THE CREHAN?

10:49:49 12 A. THE MARKET SHARE DATA. YES.

10:49:51 13 SO THEN ANOTHER -- I THINK ANOTHER CONSIDERATION IS AT ANY  
10:49:57 14 MOMENT FOR ANY DEAL, YOU MAY NOT KNOW EXACTLY WHICH OTHER  
10:50:01 15 PARTICIPANTS ARE GOING TO BE ACTUALLY AT ISSUE IN THAT  
10:50:04 16 PARTICULAR ENGAGEMENT.

10:50:08 17 ESPECIALLY BECAUSE WE KNOW THAT WHEN YOU ARE TRYING TO  
10:50:13 18 SOLICIT COMPETITIVE BIDS FOR SOMETHING, IT'S IMPORTANT WHEN YOU  
10:50:17 19 ARE TRYING TO GET GOOD BIDS, TO TALK TO A LOT OF VENDORS.

10:50:21 20 AND SO THE MARKET SHARE TELLS US, SO THE RECORD IS  
10:50:23 21 DIFFICULT ON THAT POINT, BUT THE MARKET SHARE TELLS US, AT THE  
10:50:26 22 END OF THE DAY, WHAT FRACTION OF SALES DOES CISCO ACTUALLY WIN  
10:50:30 23 OUT THERE IN THE REAL MARKETPLACE.

10:50:32 24 SO IT OVERCOMES THAT SORT OF FRAGMENTARY NATURE OF THE  
10:50:37 25 EVIDENTIARY RECORD.

10:50:38 1 Q. NOW WITH THAT, DR. CHEVALIER, I WANT TO GO BACK TO  
10:50:41 2 SPECIFIC DOCUMENTS THAT MR. SILBERT ASKED YOU ABOUT WITH  
10:50:44 3 RESPECT TO MICROSOFT AND FACEBOOK.  
10:50:47 4 A. OKAY.  
10:50:48 5 Q. SO WHY DON'T WE LOOK AT THE FIRST DOCUMENT WHICH IS  
10:50:53 6 EXHIBIT 5382.  
10:51:02 7 SO THIS IS AN E-MAIL THAT WAS SENT, IF YOU FOCUS ON THE  
10:51:05 8 BOTTOM OF THAT E-MAIL, IT WAS SENT BY MR. PLETCHER FROM CISCO  
10:51:09 9 ON MARCH 26, 2013; DO YOU SEE THAT?  
10:51:12 10 A. YES.  
10:51:12 11 Q. AND HE ASKED YOU A FEW QUESTIONS ABOUT THAT. I BELIEVE HE  
10:51:16 12 ASKED YOU ABOUT THE STATEMENT, FACEBOOK'S POSITION IS THAT  
10:51:20 13 CISCO IS BEHIND THE CURVE; DO YOU RECALL THAT TESTIMONY?  
10:51:22 14 A. YES.  
10:51:22 15 Q. OKAY. BUT MR. SILBERT DIDN'T SHOW YOU THE OTHER  
10:51:29 16 STATEMENTS IN THIS DOCUMENT THAT PERTAIN TO CLI SPECIFICALLY.  
10:51:34 17 IF YOU GO TO THE MIDDLE OF THAT PARAGRAPH, COULD YOU  
10:51:36 18 HIGHLIGHT THE STATEMENT THAT STARTS, "THIS WOULD CARRY IN  
10:51:39 19 KEEPING THE API'S CURRENT, AND THAT AS ANY FEATURE IS ADDED,  
10:51:48 20 THAT DAY ONE FOR ANY FEATURE REQUIRES API, CLI AND  
10:51:52 21 INSTRUMENTATION, SNMP AND XML OR THE FEATURE MAY NOT BE  
10:51:57 22 RELEASED."  
10:51:58 23 DO YOU SEE THAT STATEMENT?  
10:51:59 24 A. YES, I DO.  
10:51:59 25 Q. LET'S LOOK AT ONE MORE STATEMENT THAT IS AT THE VERY

10:52:02 1 BEGINNING OF THIS E-MAIL THREAD.

10:52:06 2 SO THIS WHOLE E-MAIL THREAD BEGINS WITH AN E-MAIL THAT WAS

10:52:09 3 SENT ON MARCH 26, 2013, BY AN ACCOUNT MANAGER AT CISCO, AND HE

10:52:17 4 WRITES, "SUNIL MET WITH FB TODAY."

10:52:22 5 FB, IS FACEBOOK, "TO DISCUSS CHEF." I IMAGINE THAT'S A

10:52:25 6 PROJECT NAME.

10:52:27 7 "FB, FACEBOOK, MADE CLEAR TO SUNIL THAT WITH EVERY

10:52:30 8 FEATURE, CISCO NEEDS TO PROVIDE:

10:52:33 9 1. CLI.

10:52:35 10 2. 1 PK API.

10:52:38 11 3. INSTRUMENTATION SNMP XML IMPLEMENTATION."

10:52:45 12 DO YOU SEE THAT?

10:52:46 13 A. YES.

10:52:46 14 Q. DR. CHEVALIER, THIS IS 2013, CORRECT?

10:52:48 15 A. RIGHT.

10:52:48 16 Q. AND THAT'S WITHIN THE DAMAGES PERIOD THAT YOU LOOKED AT;

10:52:52 17 IS THAT RIGHT?

10:52:52 18 A. YES, DEFINITELY.

10:52:52 19 Q. SO WHAT ARE THESE STATEMENTS FROM FACEBOOK TO CISCO

10:52:57 20 SAYING, BEFORE YOU RELEASE ANY FEATURE, YOU HAVE TO HAVE A CLI

10:53:00 21 COMMAND ASSOCIATED WITH IT, WHAT DOES THAT TELL YOU ABOUT THE

10:53:03 22 IMPORTANCE OF CLI TO THE DECISION-MAKING PROCESS AT FACEBOOK IN

10:53:08 23 THIS CASE?

10:53:08 24 A. SO THEY ARE CERTAINLY USING THE CLI IN THEIR MANAGEMENT OF

10:53:12 25 THE SWITCHES, AND IT'S IMPORTANT.

10:53:14 1 Q. OKAY. AND IS THAT CONSISTENT WITH THE REST OF THE  
10:53:17 2 EVIDENCE YOU HAVE SEEN AND HEARD ABOUT THE IMPORTANCE OF CLI TO  
10:53:20 3 CUSTOMERS?  
10:53:20 4 A. YES.  
10:53:21 5 Q. OKAY. NOW LET'S LOOK AT ONE MORE DOCUMENT, THIS TIME  
10:53:24 6 ABOUT MICROSOFT. AND THIS IS, I THINK A DOCUMENT THAT  
10:53:30 7 MR. SILBERT ALSO ASKED YOU ABOUT, EXHIBIT 650. AND THIS WAS AN  
10:53:42 8 E-MAIL SENT BY MR. BETTADAHALLI.  
10:53:49 9 AND THIS WAS AN E-MAIL SENT ON JUNE 6, 2014?  
10:53:52 10 A. YES.  
10:53:52 11 Q. AND HE ASKED YOU A FEW QUESTIONS ABOUT THE CISCO FORMAT  
10:53:55 12 LANGUAGE, AND YOU SAID, I BELIEVE THAT THIS IS NOT ONLY TALKING  
10:53:58 13 ABOUT THE CLI, BUT THINGS IN ADDITION TO THE CLI AS WELL; DO  
10:54:00 14 YOU RECALL THAT?  
10:54:01 15 A. CORRECT, YES.  
10:54:01 16 Q. BUT CLEARLY THERE ARE INSTANCES, ISN'T IT TRUE,  
10:54:05 17 DR. CHEVALIER, THAT CLI IS MENTIONED IN THIS DOCUMENT, AND  
10:54:09 18 LET'S TAKE A LOOK AT, FOR EXAMPLE, DHCP CLI?  
10:54:16 19 A. YES, CORRECT. IT'S DEFINITELY MENTIONED.  
10:54:18 20 Q. THEN LET'S LOOK AT A COUPLE OF MORE DESCRIPTIONS HERE, IT  
10:54:22 21 SAYS, "WE HAVE TWO OPTIONS TO SUPPORT THE MICROSOFT  
10:54:26 22 REQUIREMENT."  
10:54:27 23 NOW I MAY HAVE MISSPOKEN, THIS IS NOT A CISCO DOCUMENT  
10:54:31 24 THIS IS AN ARISTA DOCUMENT; IS THAT CORRECT?  
10:54:32 25 A. YES, SORRY. YES.

10:54:34 1 Q. SO I APOLOGIZE TO THE JURY.

10:54:35 2 SO THIS IS AN ARISTA DOCUMENT SENT BY AN ARISTA EMPLOYEE

10:54:41 3 ON JUNE 6, 2014, AND HE'S TALKING ABOUT MICROSOFT SALES,

10:54:46 4 CORRECT?

10:54:46 5 A. CORRECT.

10:54:47 6 Q. AND SO AT THE BOTTOM THERE, WE HAVE TWO OPTIONS TO SUPPORT

10:54:52 7 MICROSOFT REQUIREMENT. ONE, ADD A NEW DHCP SNOOPING CLI; DO

10:54:58 8 YOU SEE THAT?

10:55:00 9 A. YES.

10:55:00 10 Q. AND THEN IT HAS IP -- PROPOSAL IS IP DHCP, SNOOPING

10:55:06 11 INFORMATION.

10:55:07 12 THAT'S A CLI COMMAND, CORRECT?

10:55:09 13 A. YES.

10:55:10 14 Q. AND DO YOU SEE WHAT IT SAYS THERE, THIS RESEMBLES CISCO

10:55:15 15 CLI?

10:55:15 16 A. CORRECT.

10:55:16 17 Q. OKAY. SO AGAIN, WHAT DOES THIS DOCUMENT TELL YOU ABOUT

10:55:19 18 THE IMPORTANCE OF CISCO CLI COMMANDS BEING USED BY ARISTA WITH

10:55:25 19 RESPECT TO ITS SALES FOR MICROSOFT?

10:55:28 20 A. SO AGAIN, MY -- THERE'S SOME TECHNICAL INFORMATION HERE I

10:55:33 21 COULDN'T TESTIFY TO, BUT THIS DOCUMENT, YOU KNOW, SUGGESTS TO

10:55:40 22 ME THAT EVEN AS OF 2013 DURING, THE DAMAGES PERIOD, MICROSOFT

10:55:46 23 IS INTERACTING WITH ARISTA ABOUT WANTING COMMANDS THAT ARE

10:55:50 24 SIMILAR TO THE CISCO CLI.

10:55:52 25 Q. AND ONE LAST DOCUMENT. THIS IS EXHIBIT 58 -- OR 6509.

10:56:07 1 AND AGAIN, MR. SILBERT ASKED YOU ABOUT THIS, IT WAS SENT  
10:56:10 2 FROM MR. PREMJI AT ARISTA TO MR. SWEENEY.  
10:56:13 3 AND AGAIN, THIS IS DEALING WITH MS SPREADSHEETS, THAT'S  
10:56:18 4 MICROSOFT SPREADSHEETS, CORRECT?  
10:56:20 5 A. CORRECT.  
10:56:20 6 Q. AND AGAIN, THE DATE IS 2011; IS THAT RIGHT?  
10:56:22 7 A. RIGHT.  
10:56:22 8 Q. AND THAT'S WITHIN YOUR DAMAGES PERIOD?  
10:56:24 9 A. CORRECT.  
10:56:25 10 Q. OKAY. SO IF YOU LOOK AT THE NEXT TWO PAGES OVER, AND THIS  
10:56:39 11 MAY BE IN THE NATIVE DOCUMENT. THERE WE GO. SO IF YOU GO TO  
10:56:43 12 THE ROW THAT SAYS CLI, WHICH IS, IF YOU SCROLL DOWN, I BELIEVE  
10:56:47 13 IT'S ON THE FIRST PAGE, IN THE MIDDLE OF THE FIRST PAGE.  
10:56:51 14 DO YOU SEE THAT?  
10:56:52 15 A. UH-HUH.  
10:56:54 16 Q. SO ADMINISTRATION, CLI, SO YOU UNDERSTAND THAT WHAT'S ON  
10:56:57 17 THE LEFT IS COMING FROM MICROSOFT AND THEN ARISTA IS RESPONDING  
10:57:02 18 BY FILLING OUT THE SPREADSHEET?  
10:57:04 19 A. EXACTLY, YES.  
10:57:05 20 Q. SO MICROSOFT SAYS CLI, AND THE RANK IS 1,000 FOR  
10:57:11 21 MICROSOFT?  
10:57:11 22 A. RIGHT. AND MY RECOLLECTION IS THE 1,000 MEANT CRITICAL.  
10:57:15 23 Q. THAT'S RIGHT. AND SO I THINK, I BELIEVE IT SAYS MANDATORY  
10:57:20 24 MUST HAVE BEFORE ANY PILOT DEPLOYMENT; DO YOU SEE THAT?  
10:57:25 25 A. RIGHT.

10:57:25 1 Q. SO IF YOU GO TO WHAT ARISTA ACTUALLY SAID IN RESPONSE TO  
10:57:29 2 THAT MANDATORY REQUIREMENT, IF YOU SCROLL TO THE RIGHT, WHAT  
10:57:35 3 DID ARISTA TELL MICROSOFT AS THE MANDATORY REQUIREMENT FOR IT'S  
10:57:43 4 7508 PRODUCT?  
10:57:43 5 A. THEY FILLED IN INDUSTRY STANDARD CLI.  
10:57:45 6 AND AGAIN, MY UNDERSTANDING IS THOSE COLUMNS WERE ARISTA'S  
10:57:48 7 ENTRIES.  
10:57:48 8 Q. AND YOU HEARD TESTIMONY IN THIS CASE WHERE ARISTA USED THE  
10:57:51 9 TERM "INDUSTRY STANDARD CLI" TO REFER TO THEIR USE OF CISCO  
10:57:55 10 CLI, CORRECT?  
10:57:56 11 A. YES.  
10:57:57 12 MR. PAK: I DON'T HAVE ANY MORE QUESTIONS,  
10:57:59 13 YOUR HONOR.  
10:57:59 14 THE COURT: THANK YOU.  
10:58:00 15 MR. SILBERT, MORE FOR THIS WITNESS?  
10:58:06 16 **RECROSS-EXAMINATION**  
10:58:06 17 BY MR. SILBERT:  
10:58:15 18 Q. GOOD MORNING.  
10:58:16 19 A. GOOD MORNING.  
10:58:16 20 Q. YOU TALKED WITH MR. PAK ABOUT THE IDEA OF HAVING AN  
10:58:19 21 INCOMPLETE RECORD; RIGHT?  
10:58:20 22 A. YES.  
10:58:20 23 Q. NOW YOU KNOW THAT CISCO BEARS THE BURDEN OF PROOF TO PROVE  
10:58:26 24 ITS COPYRIGHT LOST PROFITS DAMAGES; RIGHT?  
10:58:29 25 A. YES.

10:58:29 1 Q. YOU TALKED ABOUT THAT IN YOUR DIRECT TESTIMONY ON FRIDAY;

10:58:33 2 RIGHT?

10:58:33 3 A. RIGHT.

10:58:33 4 Q. AND YOU ALSO KNOW THAT CISCO HAD THE ABILITY, IF IT WANTED

10:58:38 5 TO, TO SUBPOENA FACEBOOK OR MICROSOFT OR ANY OTHER CUSTOMER AND

10:58:43 6 ASK THEM HOW MUCH DO YOU ACTUALLY CARE ABOUT THE CLI BEING

10:58:48 7 CISCO-LIKE OR NOT; RIGHT?

10:58:50 8 A. YES, THOUGH, AT ANY IN A MOMENT TIME, PARTICULAR

10:58:57 9 EXECUTIVES WHO ARE THERE MAY BE MORE OR LESS INFORMATIVE.

10:59:02 10 Q. OKAY. YOU UNDERSTAND CISCO HAD THE ABILITY TO COMPEL THAT

10:59:05 11 INFORMATION IF IT WANTED TO AND HAVE A WITNESS COME AND TESTIFY

10:59:08 12 AND ANSWER THOSE QUESTIONS AND EITHER SAY, WE WOULDN'T HAVE

10:59:12 13 BOUGHT THIS THING IF IT DIDN'T HAVE A CISCO-LIKE CLI, OR

10:59:16 14 ALTERNATIVELY, WE REALLY DON'T CARE WHETHER THE CLI LOOKS LIKE

10:59:20 15 CISCO'S OR NOT; RIGHT?

10:59:22 16 MR. PAK: OBJECTION. ARGUMENTATIVE.

10:59:23 17 THE COURT: OVERRULED.

10:59:24 18 THE WITNESS: YES, THEY COULD HAVE BROUGHT IN A

10:59:26 19 CURRENT, I BELIEVE A CURRENT FACEBOOK PERSON TO ANSWER

10:59:29 20 QUESTIONS OF THAT SORT, PERHAPS RETROSPECTIVELY.

10:59:32 21 MR. SILBERT: OKAY.

10:59:33 22 Q. NOW YOU CALLED THE EVIDENCE THAT YOU RELIED ON FOR

10:59:39 23 SCENARIOS 1 AND 2 AN INCOMPLETE RECORD; RIGHT?

10:59:42 24 A. INCOMPLETE IN THE SENSE THAT WE DON'T HAVE ALL THE

10:59:46 25 DOCUMENTS AND CONVERSATIONS FROM THE PAST, YES.

10:59:50 1 Q. OKAY. SO SCENARIO 3, WHICH IS WHERE YOUR CONTENTION IS  
10:59:54 2 ARISTA WOULD HAVE BEEN UNABLE TO MAKE 80 PERCENT OF ALL OF ITS  
10:59:59 3 SALES IF IT DIDN'T COPY, ILLEGALLY COPY CISCO'S CLI, THAT  
11:00:05 4 CONTENTION, YOU ARE BASING ON OPINIONS OF TOP EXECUTIVES AT  
11:00:12 5 ARISTA, IS THE WAY YOU PUT IT; RIGHT?  
11:00:14 6 A. IN PART, BUT YES, LARGELY THE TESTIMONY OF TOP EXECUTIVES  
11:00:20 7 AT ARISTA.  
11:00:20 8 Q. OKAY. AND OBVIOUSLY YOU PUT A LOT OF STOCK IN THOSE  
11:00:24 9 ARISTA EXECUTIVES'S OPINIONS; RIGHT?  
11:00:27 10 A. WELL, THEY WERE IN DEPOSITIONS UNDER OATH, YES.  
11:00:31 11 Q. OKAY. AND IF THOSE EXECUTIVES EXPLAIN UNDER OATH THAT  
11:00:38 12 WHAT YOU'RE INTERPRETING THEIR STATEMENTS TO MEAN IS NOT WHAT  
11:00:41 13 THEY ACTUALLY MEANT, OBVIOUSLY THAT'S SOMETHING THAT YOU WOULD  
11:00:45 14 PLACE A LOT OF IMPORTANCE ON; RIGHT?  
11:00:48 15 A. YES, IF THEY EXPLAINED CLEARLY THAT THEY WERE  
11:00:54 16 MISINTERPRETED, SURE.  
11:00:55 17 Q. OKAY. YOU UNDERSTAND THAT THERE'S A DIFFERENCE BETWEEN  
11:01:00 18 HAVING A CLI AND HAVING A CLI THAT INFRINGES CISCO'S  
11:01:08 19 COPYRIGHTS; RIGHT?  
11:01:08 20 A. YES, I DO UNDERSTAND THAT.  
11:01:09 21 Q. YOU UNDERSTAND THAT EVERY, PRETTY MUCH EVERY SINGLE  
11:01:12 22 NETWORK SWITCH VENDOR HAS A CLI; RIGHT?  
11:01:14 23 A. YES, I UNDERSTAND THAT.  
11:01:15 24 Q. OKAY. AND SO WHEN YOU SEE STATEMENTS THAT PLACE A VALUE  
11:01:21 25 ON A CLI, YOU UNDERSTAND OR WE WANT A CLI COMMAND, YOU

11:01:29 1 UNDERSTAND THAT THAT'S NOT THE SAME THING AS SAYING, WE WANT  
11:01:32 2 YOU TO HAVE THE SAME COMMAND THAT CISCO HAS BECAUSE WE REFUSE  
11:01:36 3 TO LEARN ANYTHING ELSE; RIGHT?  
11:01:39 4 A. YES, I UNDERSTAND THAT THAT IS TRUE.  
11:01:45 5 MR. SILBERT: OKAY. I HAVE NOTHING FURTHER.  
11:01:46 6 THE COURT: MR. PAK, ANYTHING FOR DR. CHEVALIER?  
11:01:50 7 **FURTHER REDIRECT EXAMINATION**  
11:01:51 8 BY MR. PAK:  
11:01:59 9 Q. AGAIN, JUST TO BE CLEAR, DR. CHEVALIER, YOU LOOKED AT ALL  
11:02:03 10 THE EVIDENCE THAT'S BEEN PRODUCED IN THIS CASE, NOT JUST THE  
11:02:06 11 SNIPPETS OF TESTIMONY AND EXHIBITS THAT WERE SHOWN TO YOU BY  
11:02:08 12 COUNSEL; IS THAT CORRECT?  
11:02:09 13 A. OH, YES, OF COURSE.  
11:02:10 14 Q. AND WITH RESPECT TO LOST PROFITS, WE TALKED ABOUT JUST TO  
11:02:15 15 MAKE SURE WE UNDERSTAND FOR THE JURORS, YOU ARE COMING BACK TO  
11:02:18 16 TALK ABOUT DISGORGEMENT ISSUES, SO TODAY'S TESTIMONY WAS ABOUT  
11:02:23 17 LOST PROFITS AND THE PATENT DAMAGES; IS THAT CORRECT?  
11:02:24 18 A. YES, CORRECT.  
11:02:26 19 Q. OKAY.  
11:02:26 20 MR. PAK: THAT'S IT, YOUR HONOR.  
11:02:27 21 THE COURT: THANK YOU. IS THAT EVERYTHING?  
11:02:31 22 DR. CHEVALIER, THANK YOU FOR YOUR TESTIMONY. YOU ARE FREE  
11:02:33 23 TO GO.  
11:02:38 24 MR. NELSON, YOUR NEXT WITNESS?  
11:02:42 25 MR. NELSON: WE ARE GOING TO PLAY SOME DEPOSITION

11:02:44 1 TESTIMONY FIRST, YOUR HONOR, BEFORE OUR NEXT LIVE WITNESS.

11:02:47 2 THE COURT: OKAY.

11:02:48 3 MR. PAK: YOUR HONOR, THIS IS THE DEPOSITION

11:02:50 4 TESTIMONY, WE HAVE A SHORT CLIP FROM MR. ANSHUL SADANA WHO IS

11:02:55 5 ARISTA'S CHIEF CUSTOMER OFFICER. HE TESTIFIED LIVE, BUT WE

11:02:59 6 ALSO HAVE SOME DEPOSITION TESTIMONY TO PLAY FOR THE JURORS AS

11:03:03 7 WELL.

11:03:19 8 **(THE VIDEO DEPOSITION OF ANSHUL SADANA WAS PLAYED INTO THE**

11:07:44 9 **RECORD.)**

11:07:44 10 MR. PAK: THANK YOU, YOUR HONOR. THAT ENDS THE

11:07:45 11 TESTIMONY OF MR. SADANA.

11:07:47 12 AND I THINK WE HAVE MR. CHAMBERS WHO WILL BE OUR NEXT

11:07:52 13 WITNESS.

11:07:53 14 MR. NELSON: YES, YOUR HONOR.

11:07:55 15 WE WILL CALL JOHN CHAMBERS TO THE STAND. AND HANDLING THE

11:07:59 16 EXAMINATION IS GOING TO BE A NEW FACE, MR. JOHN DESMARAIS.

11:08:12 17 THE COURT: AND MR. CHAMBERS IS HERE.

11:08:15 18 MR. CHAMBERS, IF YOU WOULD COME FORWARD TO THE WITNESS

11:08:17 19 STAND, PLEASE, AND STAND TO BE SWORN.

11:08:21 20 THE WITNESS: THANK YOU, YOUR HONOR. GOOD MORNING.

11:08:23 21 **(PLAINTIFF'S WITNESS, JOHN CHAMBERS, WAS SWORN.)**

11:08:37 22 THE WITNESS: YES, I DO.

11:08:44 23 THANK YOU VERY MUCH.

11:08:44 24 THE CLERK: IF YOU WOULD STATE YOUR NAME FOR THE

11:08:47 25 RECORD AND SPELL YOUR LAST NAME.

11:08:48 1 THE WITNESS: JOHN CHAMBERS. C-H-A-M-B-E-R-S.

11:08:53 2 THE COURT: GOOD MORNING, MR. DESMARAIS, WELCOME.

11:08:56 3 MR. DESMARAIS: GOOD MORNING, YOUR HONOR.

11:08:57 4 JOHN DESMARAIS FOR CISCO.

11:08:57 5 **DIRECT EXAMINATION**

11:08:57 6 BY MR. DESMARAIS

11:09:00 7 Q. GOOD MORNING, MR. CHAMBERS.

11:09:01 8 A. GOOD MORNING. GOOD MORNING TO ALL OF YOU.

11:09:02 9 Q. WOULD YOU PLEASE EXPLAIN TO THE JURY WHAT YOUR CURRENT

11:09:06 10 POSITION IS AT CISCO?

11:09:07 11 A. YES. I'M AN EXECUTIVE VICE CHAIRMAN, WHICH MEANS A

11:09:10 12 WORKING CHAIRMAN AT CISCO, AND I HAVE BEEN IN THAT ROLE FOR

11:09:16 13 15 MONTHS.

11:09:16 14 Q. IS IT THAT THE SENIOR MOST POSITION AT CISCO?

11:09:18 15 A. NO, IT IS NOT. THE CEO IS THE SENIOR MOST POSITION.

11:09:22 16 Q. AND WERE YOU CEO WHEN THIS CASE WAS FILED, SIR?

11:09:27 17 A. YES, I WAS. I WAS CEO FOR 20 YEARS.

11:09:29 18 Q. SO DID YOU AUTHORIZE THE FILING OF THIS LAWSUIT AGAINST

11:09:31 19 ARISTA?

11:09:31 20 A. YES, I DID.

11:09:32 21 Q. SO I WOULD LIKE TO TALK A LITTLE BIT ABOUT WHY THE CASE

11:09:35 22 WAS FILED. BUT BEFORE WE DO THAT, LET'S TELL THE JURY A LITTLE

11:09:40 23 BIT ABOUT YOUR BACKGROUND, A LITTLE BIT ABOUT CISCO, AND A

11:09:40 24 LITTLE BIT ABOUT ARISTA.

11:09:43 25 WHERE WERE YOU BORN AND RAISED, MR. CHAMBERS?

11:09:44 1 A. I WAS BORN IN CLEVELAND, OHIO. MY PARENTS WENT TO MEDICAL  
11:09:49 2 SCHOOL THERE. I MOVED TO WEST VIRGINIA TO STAY WITH MY  
11:09:49 3 GRANDPARENTS AS THEY ATTENDED MEDICAL SCHOOL.  
11:10:03 4 RAISED IN WEST VIRGINIA. AND I GREW UP THROUGH HIGH  
11:10:04 5 SCHOOL IN WEST VIRGINIA, SO I WAS THERE MOST OF MY YOUNG LIFE.  
11:10:09 6 Q. ARE YOU MARRIED?  
11:10:10 7 A. YES, I AM. I'M MARRIED TO MY HIGH SCHOOL SWEETHEART.  
11:10:14 8 Q. HOW LONG HAVE YOU BEEN MARRIED?  
11:10:15 9 A. I HAVE BEEN MARRIED, OH MY GOSH, I BETTER NOT MESS THIS  
11:10:21 10 ONE UP, 43 YEARS, ABOUT TO BE 44.  
11:10:23 11 Q. AND DO YOU HAVE CHILDREN?  
11:10:24 12 A. YES, I HAVE TWO GREAT KIDS.  
11:10:26 13 Q. TELL US BRIEFLY ABOUT YOUR KIDS.  
11:10:28 14 A. MY DAUGHTER IS A DESIGNER AND A HOME BUILDER OUT OF  
11:10:34 15 LOS ANGELES. MY SON IS IN THE HIGH TECH INDUSTRY. AND I HAVE  
11:10:38 16 TWO GREAT GRANDKIDS, AN EIGHT YEAR OLD AND A THREE-AND-A-HALF  
11:10:41 17 YEAR OLD.  
11:10:41 18 Q. WHERE YOU DID YOU GO TO COLLEGE, MR. CHAMBERS?  
11:10:44 19 A. I WENT TO COLLEGE FOR A LONG TIME, NINE AND A HALF YEARS.  
11:10:48 20 I WENT TO DUKE WEST VIRGINIA AND INDIANA.  
11:10:50 21 Q. AND WHAT DEGREES DID YOU GET FROM COLLEGE?  
11:10:53 22 A. I GOT A BUSINESS DEGREE, A LAW DEGREE, AND THEN BA DEGREE.  
11:10:56 23 Q. AND AFTER YOU ACHIEVED THESE DEGREES, WHEN DID YOU BEGIN  
11:11:01 24 YOUR CAREER AND WHERE WAS THAT?  
11:11:03 25 A. AGAIN, I BEGAN MY CAREER IN 1976 IN INDIANAPOLIS WITH IBM.

11:11:09 1 Q. AND ABOUT HOW LONG WERE YOU WITH IBM?

11:11:13 2 A. ABOUT -- A LITTLE BIT OVER SIX YEARS.

11:11:16 3 Q. AND JUST VERY BRIEFLY, WHAT KIND OF THINGS DID YOU DO FOR

11:11:20 4 IBM AT THAT TIME?

11:11:21 5 A. I STARTED IN SALES, THEN MOVED TO A REGIONAL JOB, KIND OF

11:11:24 6 A COMPETITIVE EXPERT, IF YOU WILL, AND THEN A FIRST-LINE

11:11:26 7 MANAGEMENT JOB IN PITTSBURGH.

11:11:28 8 Q. AND WHERE DID YOU HEAD AFTER IBM?

11:11:31 9 A. I WENT TO WANG LABORATORIES.

11:11:33 10 Q. AND WHERE WAS YOUR JOB LOCATED WHEN YOU WERE AT WANG

11:11:37 11 LABORATORIES?

11:11:37 12 A. I WAS IN ATLANTA, THEN GREENSBOROUGH, THEN CHICAGO, THEN

11:11:43 13 BOSTON.

11:11:43 14 Q. AND ABOUT HOW LONG DID YOU STAY WITH WANG LABORATORIES?

11:11:47 15 A. ABOUT EIGHT YEARS.

11:11:47 16 Q. AND AGAIN, JUST VERY BRIEFLY, WHAT KINDS OF THINGS DID YOU

11:11:51 17 DO FOR WANG?

11:11:52 18 A. I STARTED OFF IN SALES MANAGEMENT. THEN MANAGED TO REGION

11:11:56 19 OF THE U.S. OPERATIONS, THEN MANAGED ASIA PACIFIC OPERATIONS

11:11:59 20 FOR WANG, AND THEN RAN THE U.S. OPERATIONS. SO ABOUT 10,000

11:12:03 21 PEOPLE IN MY LAST JOB.

11:12:05 22 Q. AND WHAT DID YOU DO AFTER YOU LEFT WANG LABS?

11:12:08 23 A. CAME TO CISCO, HERE IN SILICON VALLEY.

11:12:11 24 Q. WHEN WAS THAT?

11:12:11 25 A. JANUARY 1991.

11:12:14 1 Q. AND WHAT WAS YOUR FIRST POSITION AT CISCO?

11:12:16 2 A. FIRST POSITION WAS HEAD OF WORLDWIDE OPERATIONS WHICH IS

11:12:20 3 BASICALLY SALES, AND THEN THEY ADDED OVER TIME, SERVICE,

11:12:23 4 MARKETING, ET CETERA, TO IT.

11:12:25 5 Q. YOU SAID THAT WAS IN SILICON VALLEY, WAS IT IN SAN JOSE?

11:12:28 6 A. YES. WELL, AT THAT TIME WE WERE UP NORTH, WE MOVED TO

11:12:33 7 SAN JOSE ABOUT TEN YEARS AGO.

11:12:35 8 Q. AND ARE YOU STILL IN SAN JOSE TODAY?

11:12:37 9 A. YES, WE ARE.

11:12:38 10 Q. AND HOW MANY EMPLOYEES DOES CISCO HAVE IN SAN JOSE IN THE

11:12:43 11 VALLEY AREA?

11:12:44 12 A. WE HAVE ABOUT 15,000 EMPLOYEES IN THE VALLEY AREA.

11:12:46 13 Q. AND DO YOU AND YOUR FAMILY LIVE IN THE VALLEY?

11:12:48 14 A. OH, YES, WE LOVE IT HERE. HOPEFULLY I'M NOT GOING TO HAVE

11:12:53 15 TO MOVE AGAIN. YOU MIGHT HAVE TO TRADE ME IN, IF I DO.

11:12:56 16 Q. TELL US VERY BRIEFLY, IF YOU WILL, HOW YOU WENT FROM THAT

11:12:59 17 VERY FIRST POSITION IN 1991 TO WHERE YOU ARE TODAY AS EXECUTIVE

11:13:03 18 CHAIRMAN?

11:13:03 19 A. SURE. I STARTED OFF IN THE WORLDWIDE SALES OPERATIONS.

11:13:07 20 WE HAD ABOUT 500 PEOPLE AT THAT TIME. ABOUT 70 MILLION IN

11:13:11 21 SALES.

11:13:12 22 AND THEN OVER TIME, I PICKED UP MORE RESPONSIBILITIES,

11:13:15 23 U.S. SALES OPERATIONS, PICKED UP SERVICES, MARKETING. AND THEN

11:13:20 24 OVER A PERIOD OF ABOUT FOUR YEARS, EVERYTHING WAS ADDED TO ME,

11:13:25 25 THEN I BECAME CEO, AT THAT TIME EVERYTHING WAS ALREADY

11:13:28 1 REPORTING TO ME.

11:13:29 2 Q. AND THEN AFTER YOU BECAME CEO, DID THERE COME A TIME WHERE

11:13:32 3 YOU ALSO ADDED THE ROLE OF CHAIRMAN OF THE BOARD?

11:13:35 4 A. YES. I THINK THAT WAS ABOUT TEN YEARS LATER.

11:13:38 5 Q. AND THEN YOU SAID TODAY YOU ARE EXECUTIVE CHAIRMAN, WHEN

11:13:41 6 DID YOU TRANSITION FROM CHAIRMAN OF THE BOARD AND CEO, TO YOUR

11:13:45 7 CURRENT ROLE AS EXECUTIVE CHAIRMAN?

11:13:47 8 A. LAST SUMMER, ABOUT 15, 16 MONTHS AGO.

11:13:50 9 Q. AND WHAT WAS THE REASON FOR THAT CHANGE?

11:13:51 10 A. IT WAS MY DECISION THAT IT WAS TIME FOR ME MOVE ON. AND

11:13:55 11 CISCO IS MY FAMILY, IT'S SO IMPORTANT TO ME THAT THIS WAS A

11:14:00 12 VERY SMOOTH TRANSITION. OFTEN IN THE VALLEY, WE DON'T DO THAT

11:14:02 13 VERY WELL AT HIGH-TECH FIRMS.

11:14:04 14 AND SO I THOUGHT ABOUT FOR TEN YEARS ON HOW TO MAKE THIS

11:14:07 15 TRANSITION, AND WE WORKED WITH THE BOARD FOR A YEAR, AND THEN

11:14:10 16 ANNOUNCED THE TRANSITION.

11:14:11 17 AND THEN I WOULD BE THE ADVISOR TO THE NEW CEO,

11:14:16 18 CHUCK ROBBINS, WHO IS A REALLY GOOD GUY, FOR THE NEXT COUPLE

11:14:20 19 YEARS.

11:14:20 20 Q. NOW LET'S TURN AND TALK A LITTLE BIT ABOUT CISCO THE

11:14:23 21 COMPANY NOW THAT WE'VE GOT A LITTLE BIT ABOUT YOUR BACKGROUND.

11:14:26 22 TELL US, IF YOU WOULD, A LITTLE BIT ABOUT THE CULTURE OF

11:14:29 23 INNOVATION AT CISCO?

11:14:30 24 A. IT'S DEEPLY IMBEDDED. AS I ALLUDED TO EARLIER WITH IBM

11:14:35 25 AND THEN WANG LABORATORIES, WANG WAS A GREAT COMPANY. AND

11:14:39 1 DR. WANG IS A GREAT INNOVATOR, BUT WE MISSED A COUPLE OF WHAT  
11:14:43 2 WE CALL "MARKET TRANSITIONS" MOVING FROM MANY COMPUTERS TO  
11:14:46 3 PC'S, IF YOU WILL, AND SOFTWARE. AND THEN AT IBM WE MISSED THE  
11:14:49 4 TRANSITION FROM MAINFRAMES TO MINICOMPUTERS TO PC'S.  
11:14:53 5 AND SO IN EACH OF THOSE ROLES, I LEARNED A LOT ABOUT  
11:14:56 6 YOU'VE GOT TO INNOVATE CONSTANTLY OR YOU GET BEHIND. PEOPLE  
11:15:02 7 MIGHT ASK WHAT I'M MOST PROUD OF AT CISCO, IT'S OUR INNOVATION,  
11:15:07 8 IT'S OUR PEOPLE AND OUR CULTURE.  
11:15:08 9 WE'RE NOT A PERFECT COMPANY, I'M NOT A PERFECT LEADER, BUT  
11:15:10 10 IT'S A COMPANY I'M VERY PROUD OF.  
11:15:12 11 Q. LET ME SHOW YOU SOME EXHIBITS, MR. CHAMBERS.  
11:15:15 12 YOUR HONOR, MAY I APPROACH?  
11:15:16 13 THE COURT: YES.  
11:15:20 14 THE WITNESS: THANK YOU.  
11:15:26 15 Q. MR. CHAMBERS, I'VE HANDED YOU A BINDER WITH THREE SLIDES,  
11:15:31 16 CHAMBER'S SLIDES 1, 2, AND 3; DO YOU SEE THOSE?  
11:15:33 17 A. YES, I DO.  
11:15:34 18 Q. WOULD THOSE AID YOUR TESTIMONY TO THE JURY TODAY?  
11:15:36 19 A. YES, THEY WILL.  
11:15:37 20 Q. LET'S PUT UP THE FIRST SLIDE. CHAMBERS NUMBER 1.  
11:15:43 21 WHAT DO WE SEE IN THIS SLIDE, MR. CHAMBERS?  
11:15:45 22 A. THIS IS ABOUT INNOVATION, BACK TO THE QUESTION THAT YOU  
11:15:48 23 ASKED ME EARLIER, MR. DESMARAIS, IT IS WHAT I'M MOST PROUD OF.  
11:15:52 24 IT TALKS ABOUT THE MOST INNOVATE COMPANIES, THE FIRST SECTION.  
11:15:59 25 Q. LET'S STOP THERE FOR A MINUTE.

11:16:01 1 THE FIRST ENTRY SAYS "MOST INNOVATIVE COMPANIES" AND THEN  
11:16:05 2 IT HAS A SERIES OF YEARS UNDERNEATH IT; WHAT IS THAT REFERRING  
11:16:07 3 TO, EXACTLY?  
11:16:08 4 A. WELL, THAT MEANS THAT WE MADE THE VERY TOP LIST, OF THE  
11:16:08 5 MOST INNOVATIVE COMPANIES IN THE WORLD.  
11:16:17 6 IT MEANS THAT WE MADE THE LIST OF THE MOST INNOVATIVE  
11:16:22 7 COMPANIES IN THE WORLD A NUMBER OF YEARS IN A ROW, WHICH IS  
11:16:24 8 HARD TO DO.  
11:16:25 9 AND IT TAKES -- I TAKE GREAT DEAL OF PRIDE IN IT BECAUSE  
11:16:28 10 IT MEANS WE ARE CONSTANTLY REINVENTING OURSELVES. AND WHEN YOU  
11:16:31 11 GET RECOGNIZED YEAR, AFTER YEAR, AFTER YEAR, AND IT LOOKS LIKE  
11:16:35 12 WE MIGHT HAVE MISSED TWO OUT OF FIVE OUT OF 2015, IT MEANS YOU  
11:16:39 13 DO THAT CONSTANTLY, REINVENT YOURSELF, WHICH IS WHAT YOUR  
11:16:42 14 FUTURE IS ABOUT. IF YOU DON'T, YOU GET LEFT BEHIND,  
11:16:44 15 UNFORTUNATELY.  
11:16:45 16 Q. NOW THE NEXT ENTRY SAYS "BEST OF INTEROP." WHAT IS  
11:16:48 17 INTEROP?  
11:16:48 18 A. THINK OF INTEROP AS A TECHI-TYPE CONVENTION WHERE YOU GO  
11:16:54 19 TO, AND A LOT OF THE TECHNICIANS ATTEND. AND WHEN THEY GO  
11:16:58 20 THERE, THEY TALK ABOUT WHAT'S GOING ON IN THE INDUSTRY, AND  
11:17:00 21 THEN THEY HAVE RECOGNITION FOR WHAT THE TOP AWARDS ARE AT  
11:17:04 22 INTEROP. AND THIS REFERS TO THE WINNER OF MULTIPLE AWARDS AT  
11:17:10 23 INTEROP OVER THE LAST THREE YEARS.  
11:17:13 24 Q. AND THE LAST ENTRY ON THIS SLIDE TALKS ABOUT THE 2016  
11:17:16 25 EDISON ACHIEVEMENT AWARD, AWARDED TO YOU FOR SIGNIFICANT AND

11:17:21 1 LASTING CONTRIBUTION TO THE WORLD OF INNOVATION; WHAT IS THAT  
11:17:25 2 ABOUT?

11:17:25 3 A. WELL, IT'S KIND OF EXCITING. I THINK IT TIES TO THE BEST  
11:17:28 4 OF INTEROP CONCEPT. WE WON FOUR AWARDS IN 2016 IN FOUR OUT OF  
11:17:33 5 TEN CATEGORIES. AND WE WERE ALL PROUD OURSELVES, AND ANY  
11:17:38 6 HIGH-TECH COMPANY THAT'S DONE THAT.

11:17:40 7 AND AT THE SAME TIME, THE EDISON AWARD, WAS AN HONORARY  
11:17:45 8 FOR THE WHOLE COMPANY. THEY GIVE IT TO THE CEO. IT'S ONE THAT  
11:17:52 9 STEVE JOBS WON ONE YEAR. ELON MUSK OUT OF TESLA WON IT ANOTHER  
11:17:54 10 YEAR. AND IT'S FOR THE CONTINUING INNOVATION OVER THE HISTORY  
11:17:59 11 AND YOUR CONTRIBUTION ON A GLOBAL BASIS.

11:18:04 12 SO IT'S YOUR ABILITY TO HELP YOUR COMPANY INNOVATE AND TO  
11:18:19 13 RE-INNOVATE. AND SO IT'S A TREMENDOUS HONOR FOR ME, BUT REALLY  
11:18:22 14 IT'S AN HONOR THAT THE COMPANIES DESERVES. I THINK ALL OF  
11:18:24 15 THESE SPEAK TO OUR INNOVATION CAPABILITY, AND IT'S SOMETHING  
11:18:28 16 THAT I'M VERY PROUD OF. I THINK IT'S UNIQUE IN THE VALLEY.

11:18:30 17 Q. SO IT SEEMS CISCO HAS BEEN PRETTY SUCCESSFUL IN  
11:18:33 18 INNOVATING. HAVE ALL OF YOUR EFFORTS TO INNOVATE BEEN  
11:18:37 19 SUCCESSFUL, SIR?

11:18:38 20 A. NO. I THINK ONE OF THE IMPORTANT THINGS THAT IN BUSINESS  
11:18:41 21 OR IN OUR PERSONAL LIVES OR OUR FAMILY IS TO REALIZE THAT YOU  
11:18:45 22 WILL HAVE A SET OF FACTS THAT IF YOU ARE NOT TAKING GOOD RISK,  
11:18:49 23 YOU CAN -- YOU WOULD NOT STAY AHEAD.

11:18:53 24 WHEN YOU TAKE GOOD BUSINESS RISK, THERE WILL BE SETBACKS.  
11:19:10 25 I THINK YOU ARE MORE A PRODUCT -- MORE PRODUCT OF YOUR

11:19:14 1 SETBACKS. I APOLOGIZE, WE WIFE, SHE'S A SPEAK THERAPIST, AND  
11:19:22 2 SHE CAN'T EVEN FIX MY ACCENT. YOU ARE MORE A PRODUCT OF OUR  
11:19:23 3 SETBACKS THAN WE ARE OF OUR SUCCESSES.  
11:19:25 4 AND MANY PEOPLE DON'T THINK ABOUT THAT BECAUSE THEY ALWAYS  
11:19:28 5 WRITE ABOUT YOUR SUCCESSES, AND WE'VE DONE A LOT OF THOSE. BUT  
11:19:31 6 WHAT GREAT COMPANIES DO IS THEY HANDLE THEIR SETBACKS WELL, AND  
11:19:34 7 THEY ARE WILLING TO TAKE THE RISK.  
11:19:36 8 SAME THING WITH OUR KIDS, IN MANY WAYS, DEVELOPING A  
11:19:40 9 COMPANY IS LIKE DEVELOPING A FAMILY. IT'S HOW YOUR KIDS HANDLE  
11:19:44 10 THEIR SETBACKS IN LIFE, THEY ARE ALMOST MORE IMPORTANT THAN HOW  
11:19:47 11 THEY HANDLE THEIR SUCCESSES.  
11:19:48 12 SO WE HAD 193 ACQUISITIONS, 180 UNDER MY TIME PERIOD.  
11:19:53 13 ABOUT TWO-THIRDS OF THEM WORKED AND ABOUT A THIRD OF THEM  
11:19:56 14 DIDN'T.  
11:20:00 15 Q. SO INNOVATION SOUNDS LIKE IT TAKES A LOT OF EFFORT AND A  
11:20:04 16 LOT OF EXPENSE.  
11:20:07 17 WHAT IS CISCO'S ANNUAL RESEARCH AND DEVELOPMENT BUDGET FOR  
11:20:09 18 THESE INNOVATIONS?  
11:20:10 19 A. SURE. IT'S ABOUT \$6 BILLION A YEAR. PROBABLY ABOUT  
11:20:14 20 28,000 ENGINEERS, AND THAT DOESN'T COUNT ACQUISITIONS, WHICH IS  
11:20:18 21 ANOTHER WAY THAT YOU CONTINUE MOVING THROUGH MARKET AREAS.  
11:20:23 22 Q. AND NOW WHEN YOU JOINED CISCO BACK IN 1991, WHAT WAS  
11:20:26 23 CISCO'S PRIMARY BUSINESS AT THAT TIME?  
11:20:27 24 A. IN 1991, WE HAD JUST COME OFF ABOUT 70 MILLION IN SALES,  
11:20:33 25 WE HAD A LITTLE BIT UNDER 500 PEOPLE. WE MADE ROUTERS.

11:20:37 1 Q. WHAT'S A ROUTER?

11:20:38 2 A. A ROUTER, THINK OF IT AS A TRAFFIC SIGNAL ON THE INTERNET,

11:20:42 3 AND IT DIRECTS WHERE THE DATA -- AND IN TODAY'S WORLD, VOICE

11:20:46 4 AND VIDEO IS SUPPOSED TO GO.

11:20:49 5 AND SO IT BRINGS INTELLIGENCE TO THE NETWORK. PROBABLY

11:20:53 6 90 PERCENT OF THE INTERNET TRAFFIC TRAVELS OVER CISCO

11:20:57 7 TECHNOLOGY, BUT WE WERE A SINGLE-PRODUCT COMPANY.

11:20:59 8 Q. SO WHEN WE WRITE AN E-MAIL OR USE SOCIAL MEDIA, THAT'S

11:21:04 9 GOING OVER CISCO ROUTERS?

11:21:05 10 A. UH-HUH. OR WATCH A VIDEO OR OTHER THINGS.

11:21:07 11 Q. AND DURING YOUR LEADERSHIP AT CISCO FROM 1991 UNTIL TODAY,

11:21:12 12 DID YOU EXPAND THE COMPANY WELL BEYOND JUST ROUTERS?

11:21:15 13 A. YES, WE MOVED INTO 18 PRODUCT AREAS. I'VE LEARNED FROM

11:21:22 14 BOTH SUCCESSES, AT BOTH IBM AND WANG, BUT ALSO WATCHING OTHERS

11:21:27 15 THAT IF YOU DON'T MOVE INTO ADDITIONAL AREAS AND YOU ARE ONLY A

11:21:31 16 ONE-PRODUCT COMPANY, YOU PROBABLY WON'T SURVIVE VERY LONG. YOU

11:21:34 17 WON'T BE ABLE TO GROW AS WELL.

11:21:36 18 SO I'M VERY PROUD OF HOW WE MOVED INTO ONE NEW CATEGORY

11:21:40 19 AFTER ANOTHER. AND IN MOST CASES WE HAVE BECOME THE NUMBER ONE

11:21:45 20 PLAYER IN ALMOST ALL BUT A FEW.

11:21:46 21 Q. LET'S TAKE A LOOK AT SOME OF THOSE. CAN WE SEE THE NEXT

11:21:49 22 SLIDE, CHAMBERS 2.

11:21:50 23 ON THIS SLIDE WE SEE INTERNET CLOUD IN THE MIDDLE AND

11:21:54 24 SEVERAL PRODUCT CATEGORIES. AND LET ME JUST BRIEFLY ASK YOU,

11:21:57 25 ABOUT IN THE TOP LEFT WE SEE VOIP, OR VOICE ON THE INTERNET.

11:22:02 1 AND THEN AS WE MOVE AROUND CLOCKWISE, WE SEE SECURITY ON THE  
11:22:06 2 INTERNET, WE SEE TELEPRESENCE VIDEO CONFERENCES, WE SEE CLOUD  
11:22:10 3 COMPUTING, WE SEE WI-FI, AND WE SEE SWITCHING.  
11:22:14 4 ARE THOSE SOME OF THE AREAS THAT YOU BROUGHT THE COMPANY  
11:22:17 5 INTO DURING YOUR LEADERSHIP FROM 1991 UNTIL TODAY?  
11:22:20 6 A. YES, IT IS. AND IF IT'S ALL RIGHT FOR ME TO COMMENT ON  
11:22:24 7 EACH ONE OF THEM BRIEFLY.  
11:22:26 8 Q. YES, JUST BRIEFLY, BECAUSE IT'S BACKGROUND.  
11:22:29 9 A. OKAY. SO WHAT WE DO IS WE FOCUS ON TRANSITIONS OCCURRING  
11:22:34 10 IN THE MARKET. WE DON'T FOCUS ON A COMPETITOR. IF YOU ARE A  
11:22:36 11 COMPETITOR, YOU ARE LOOKING OUT YOUR REAR VIEW MIRROR.  
11:22:39 12 SO WE FOCUS AS CHANGES OCCUR IN THE INDUSTRY. SO WHEN  
11:22:42 13 VOICE, WHICH USED TO BE DONE OVER TELEPHONE LINES, MOVED TO  
11:22:46 14 INTERNET, WE FOCUSED ON THAT AND IT BECAME A BILLION DOLLAR  
11:22:49 15 MARKET FOR US. TODAY WE ARE THE NUMBER ONE PLAYER.  
11:22:53 16 SAME THING WITH SECURITY. 2004, WE BECAME THE NUMBER ONE  
11:22:58 17 PLAYER IN SECURITY. IT'S ABOUT \$2.4 BILLION FOR US TODAY.  
11:23:08 18 TELEPRESENCE, IT'S LIKE YOU ARE IN THE SAME ROOM, NOT  
11:23:11 19 VIDEO CONFERENCE-WISE, BUT ALMOST BECAUSE YOU CAN FILL UP. AND  
11:23:20 20 THIS DATA, WHEN BUSINESS LEADERS OR GOVERNMENT LEADERS SAW IT,  
11:23:22 21 IT'S A BILLION PRODUCT, NUMBER ONE POSITION FOR US.  
11:23:23 22 CLOUD COMPUTING IS WHAT YOU SAW KIND OF IN THE MIDDLE OF  
11:23:26 23 THIS. IT'S THE ABILITY TO BRING SERVER TECHNOLOGY AND  
11:23:29 24 NETWORKING TOGETHER.  
11:23:30 25 WE BECAME THE NUMBER ONE PLAYER IN BLADE SERVICES, AN

11:23:35 1 INDUSTRY MOST PEOPLE THOUGHT WE COULDN'T EVEN PARTICIPATE IN.

11:23:37 2 AND PLAYERS LIKE HP SAID WE WOULD BE OUT OF THE BUSINESS VERY

11:23:41 3 QUICKLY. AND WE BECAME THE NUMBER ONE PLAYER. IT'S ABOUT A \$3

11:23:46 4 BILLION MARKET. WIFI, SIMILAR SCENARIO.

11:24:00 5 SWITCHING, WE MOVED TO AFTER THAT, IT'S ABOUT A \$15

11:24:05 6 BILLION MARKET FOR US TODAY. AGAIN, NUMBER ONE POSITION.

11:24:08 7 Q. NOW WERE ALL OF THESE CATEGORIES THAT YOU JUST TALKED

11:24:11 8 ABOUT ALL DEVELOPED INTERNALLY AT CISCO?

11:24:12 9 A. WE USED A COMBINATION -- THE ANSWER TO YOUR QUESTION IS

11:24:16 10 NO.

11:24:16 11 WE USED A COMBINATION INTERNALLY DEVELOPED, USED A

11:24:19 12 COMBINATION OF PARTNERING AND USED A COMBINATION OF

11:24:21 13 ACQUISITIONS AND THEN BRING THEM TOGETHER ARCHITECTURALLY TO

11:24:25 14 PRODUCE BUSINESS OUTCOMES.

11:24:26 15 Q. NOW THE LAST AREA ON THE LEFT THERE IS APPLICATION CENTRIC

11:24:30 16 INFRASTRUCTURE. WHAT IS THAT REFERRING TO?

11:24:32 17 A. THIS IS KIND OF A TECHIE TERM. IF YOU THINK ABOUT WHAT

11:24:36 18 YOU MIGHT READ ABOUT THE CURRENT TRENDS THAT ARE AROUND

11:24:40 19 SOFTWARE DEFINED NETWORKS. BEING ABLE TO MOVE YOUR

11:24:44 20 APPLICATIONS ANYWHERE YOU WANT IN THE NETWORK. AS THAT OCCURS,

11:24:47 21 YOU WILL HAVE A NUMBER OF KEY INTELLIGENT POINTS THAT ARE

11:24:51 22 REALLY IMPORTANT TO CISCO TO BE ABLE TO LEAD IN.

11:24:54 23 AND THIS IS WHERE YOU USE A COMBINATION OF SWITCHING AND

11:24:57 24 INTERFACE TECHNOLOGY PRODUCTS AND SOFTWARE TO REALLY PRODUCE

11:25:01 25 THE RESULTS. AND IT IS THE NEXT GENERATION OF NETWORKING.

11:25:04 1 Q. AND IS THAT TECHNOLOGY USED IN THE DATA CENTER, WHAT WE  
11:25:08 2 TALKED ABOUT IN THIS CASE?

11:25:09 3 A. YES, IT WAS.

11:25:09 4 AND AGAIN, WE MOVED TO THE NUMBER ONE PLAYER IN THIS  
11:25:13 5 CATEGORY WITH ABOUT \$2.4 BILLION IN SALES, AND GROWING FASTER  
11:25:18 6 THAN OUR PEERS ARE IN THIS SEGMENT OF THE INDUSTRY.

11:25:20 7 Q. AND DOES ARISTA COMPETE WITH CISCO IN THIS DATA CENTER  
11:25:23 8 MARKET?

11:25:24 9 A. YES, THEY DID. A GOOD COMPETITOR.

11:25:27 10 Q. LET'S TALK A LITTLE BIT ABOUT ARISTA. WHEN DID YOU FIRST  
11:25:30 11 HEAR ABOUT ARISTA, THE COMPANY?

11:25:32 12 A. I FIRST HEARD ABOUT ARISTA, THE COMPANY, IN 2004. THE  
11:25:35 13 VALLEY KNOWS MOST OF THE KEY PLAYERS PRETTY WELL.

11:25:39 14 ANDY BECHTOLSHEIM WAS THE GUY OUT OF SUN, REALLY, REALLY  
11:25:43 15 GOOD ENGINEERING LEAD. HE WAS THE CEO OF A COMPANY CALLED  
11:25:48 16 GRANITE THAT WE BOUGHT. AND THEN WE FOUNDED ARISTA IN 2004.

11:25:53 17 JUST A LITTLE RADAR WENT UP, A LITTLE BLIP, IF YOU WILL, THAT  
11:25:58 18 THIS COULD EITHER BE SOMEBODY WE COULD COMPETE WITH, SOMEBODY  
11:26:01 19 WE MIGHT ACQUIRE AND JUST NEEDED TO BE AWARE OF WHEN IT COMES  
11:26:04 20 TO IT.

11:26:04 21 Q. NOW WHEN ARISTA WAS FORMED OR YOU FIRST HEARD OF THEM IN  
11:26:08 22 2004, WHEN DID YOU FIRST START SEEING ARISTA COMPETING WITH  
11:26:11 23 CISCO IN THE DATA CENTER MARKET?

11:26:13 24 A. I WOULD SAY PROBABLY ABOUT 2008 WE BEGAN TO SEE THEM IN  
11:26:22 25 CERTAIN PRODUCT AREAS, PRIMARILY A NICHE PLAYER, LOW LATENCY.

11:26:28 1 I'M SORRY, THE CAPABILITY TO HAVE THE RESPONSE TIME QUICKLY IN  
11:26:31 2 WALL STREET-TYPE OF APPLICATIONS.

11:26:36 3 SO IT WAS 2008, WAS THE FIRST TIME I SAW THE DATA CENTER.  
11:26:39 4 THE FIRST TIME STAY STARTED PLAYING IN THE LARGER SCALE WAS  
11:26:42 5 PROBABLY 2011. THEY BROUGHT OUT A HIGH END SWITCH TOWARD THE  
11:26:46 6 END OF 2010, AND THAT'S WHEN WE BEGAN TO SEE THEM MORE OF A  
11:26:52 7 BIGGER POTENTIAL COMPETITOR. MORE ON A LARGER SCALE, IF YOU  
11:26:56 8 WILL.

11:26:56 9 Q. AND AT THAT TIME, IN THAT LATE 2010, 2011 TIME PERIOD,  
11:27:04 10 WHAT SWITCHES WAS CISCO SELLING IN THE DATA CENTER?

11:27:07 11 A. OUR KEY HIGH END SWITCHES, AND THIS WAS PROBABLY OUR FIFTH  
11:27:10 12 OR SIXTH GENERATION OF HIGH END SWITCHES WHICH WERE THE NEXUS  
11:27:14 13 7000 AND THE NEXUS 5000.

11:27:16 14 Q. WHO AT CISCO DESIGNED THE NEXUS 7000?

11:27:21 15 A. JAYSHREE ULLAL HAD THE RESPONSIBILITY FOR THE 7000.  
11:27:26 16 WHETHER SHE SPECIFICALLY DESIGNED IT OR NOT, I'M NOT SURE. BUT  
11:27:28 17 SHE LEAD THE WHOLE GROUP AND DID A VERY GOOD JOB ON THE 7000.

11:27:32 18 Q. IS THAT THE SAME JAYSHREE ULLAL WHO IS AT CISCO NOW?

11:27:34 19 A. YES, IT IS.

11:27:35 20 Q. SO SHE LEFT CISCO TO JOIN ARISTA TO COMPETE AGAINST THE  
11:27:39 21 PRODUCT SHE WAS RESPONSIBLE FOR AT CISCO?

11:27:42 22 MR. VAN NEST: OBJECTION. LEADING.

11:27:42 23 THE COURT: OVERRULED.

11:27:44 24 THE WITNESS: OVERRULED MEANS I CAN ANSWER?

11:27:46 25 THE COURT: YOU MAY ANSWER.

11:27:47 1 THE WITNESS: OKAY. THE ANSWER WOULD BE YES.

11:27:49 2 BUT JAYSHREE WAS SOMEBODY I SPONSORED. I REALLY LIKE HER,

11:27:53 3 SHE'S A GOOD PERSON AND A GOOD ENGINEER, AND I WAS DISAPPOINTED

11:27:58 4 SHE WENT TO A COMPETITOR. BUT SHE DID GO TO A COMPETITOR WITH

11:28:01 5 PRODUCTS, DIRECTLY THE ONES THAT SHE DEVELOPED.

11:28:03 6 Q. NOW WHEN THE ARISTA PRODUCT STARTED COMPETING WITH YOU AND

11:28:07 7 THE DATA CENTER IN 2011 AGAINST THE CISCO NEXUS 7000 AND THE

11:28:12 8 OTHER SWITCH, WAS ARISTA A TOUGH COMPETITOR AT THAT TIME?

11:28:16 9 A. YES, THEY WERE A GOOD COMPETITOR. AND IN EACH PRODUCT

11:28:19 10 AREA, WE HAVE A NUMBER OF GOOD COMPETITORS, SO CLEARLY NOT THE

11:28:22 11 ONLY COMPETITOR IN THE DATA CENTER, THOUGH.

11:28:25 12 Q. AND DID CISCO START TO LOSE SALES TO ARISTA AT THAT TIME?

11:28:28 13 A. YES, BY DEFINITION, WE DID.

11:28:30 14 Q. LET'S TAKE A LIKE AT THE NEXT SLIDE IN YOUR BINDER,

11:28:34 15 CHAMBERS SLIDE 3, PLEASE, AND IF WE COULD PUT IT UP ON THE

11:28:37 16 SCREEN.

11:28:37 17 WHAT DID DO WE SEE HERE IN CHAMBERS SLIDE THREE?

11:28:41 18 A. WHENEVER YOU BUILD A ROUTER OR A SWITCH, YOU ALMOST WANT

11:28:44 19 TO THINK OF IT IN PRETTY SIMPLISTIC TERMS.

11:28:47 20 YOU SEE OUR HIGH END SWITCH LINE, THE NEXUS 9000, YOU

11:28:51 21 THINK OF IT AS REAL BIG, MEDIUM SIZED, AND SMALLER. SO THOSE

11:28:55 22 WERE THE SWITCHES THAT BRING TO LIFE THE SOFTWARE DEFINED

11:28:59 23 CAPABILITIES, NAVIGATION AND INFRASTRUCTURE.

11:29:02 24 YOU SEE A PERSON OVER ON THE LEFT SIDE INTERFACING THESE

11:29:06 25 SWITCHES, THEY ARE REALLY COMPLEX. AND IT'S SO IMPORTANT THAT

11:29:10 1 YOU TAKE THAT COMPLEXITY OUT FROM A USER INTERFACE AND SO YOU  
11:29:15 2 DEVELOP A SERIES OF A -- EITHER GRAPHICAL INTERFACES OR  
11:29:19 3 COMMAND-LINE INTERFACES THAT ALLOW YOU TO TALK TO THESE  
11:29:22 4 COMPUTERS IN AN EFFECTIVE WAY ON IT.  
11:29:26 5 THAT'S A HUGE COMPETITIVE ADVANTAGE TO BE ABLE TO DO THAT  
11:29:28 6 WELL.  
11:29:28 7 Q. AND ARE THESE SWITCHES THAT YOU BROUGHT OUT TO THE MARKET  
11:29:32 8 AFTER AS SORT OF THE NEXT GENERATION TO THE NEXUS 7000?  
11:29:36 9 A. YES, THEY ARE.  
11:29:37 10 Q. AND DID THEY HIT THE DATA CENTER MARKET AROUND 2013; IS  
11:29:41 11 THAT RIGHT?  
11:29:41 12 A. LATE 2013, 2014.  
11:29:48 13 Q. AND DO THESE NEXUS 7000 SWITCHES USE THE CISCO PROPRIETARY  
11:29:53 14 CLI AND OTHER USER INTERFACES THAT CISCO IS KNOWN FOR?  
11:29:57 15 A. YES, THEY BASICALLY -- WHAT IT SAYS IS THE INTERFACE TO  
11:30:04 16 US, THROUGH OUR COMMAND-LINE INTERFACE CAPABILITY, AND OUR --  
11:30:08 17 THEY USED OUR TEACHING THAT WE GIVE OUR CUSTOMERS ON HOW TO USE  
11:30:13 18 THIS AND INTERFACE TO THEM THROUGH THE MANUALS AND THROUGH THE  
11:30:17 19 ALT SCREENS, ET CETERA.  
11:30:18 20 Q. AND ARE THE NEXUS 9000 SWITCHES STRONG COMPETITORS IN THE  
11:30:22 21 DATA CENTER MARKET?  
11:30:23 22 A. YEAH, THEY HAVE BEEN VERY GOOD. IF YOU LOOK AT, AND I  
11:30:26 23 DON'T KNOW IF IT'S ON THE SCREEN OR NOT, BUT THE AWARDS WE WON.  
11:30:28 24 Q. WHAT DO WE SEE ON THE BOTTOM OF SLIDE 3, WHY DON'T YOU  
11:30:32 25 TELL US IT SAYS AWARDS THERE. WHAT'S THE FIRST AND SECOND ONE

11:30:35 1 YOU SEE THERE?

11:30:36 2 A. WELL, THE FIRST ONE IS IN 2014, WHICH IS WHEN YOU BEGIN TO

11:30:39 3 GET THE VOLUME, IT REALLY TALKED ABOUT OUR INNOVATION IN HIGH

11:30:43 4 END SWITCHING. WE HAVE ALWAYS BEEN THE LEADER, BUT AS PRODUCTS

11:30:47 5 GET OLDER, THEN YOU GO TO THE NEXT GENERATION.

11:30:48 6 AND SO THIS WAS IN 2014, WHERE WE BEGIN TO GET OUR

11:30:52 7 LEADERSHIP BACK IN TERMS OF THE PRODUCTS. AND IT WAS THE TOP

11:30:59 8 AWARD FROM THE TECHNOLOGY SPOTLIGHT, THE 2014 BEST IN INTEROP.

11:31:02 9 THAT'S IMPORTANT TO US BECAUSE THAT'S THE MOST PHYSICAL

11:31:06 10 SHOW IN THE TECHIE GROUP, IN MY OPINION, AND WE ACTUALLY WON IN

11:31:09 11 TERMS OF THE TOP DATA CENTER SWITCH VERSUS ARISTA.

11:31:13 12 Q. SO IN THAT 2014 TIMEFRAME, AT THE TIME OF THE BEST OF

11:31:18 13 INTEROP AWARD, WAS ARISTA'S SWITCH CONSIDERED IN THAT

11:31:23 14 COMPETITION AS WELL?

11:31:23 15 A. YES.

11:31:24 16 Q. AND WHOSE SWITCH WON AS THE BEST IN THE SHOW?

11:31:26 17 A. WE WON AS BEST IN SHOW.

11:31:28 18 Q. NOW EVEN THOUGH YOUR SWITCH, THE NEXUS 9000, WAS THE BEST

11:31:35 19 IN THE SHOW AT INTEROP IN 2014, WAS ARISTA STILL A TOUGH

11:31:41 20 COMPETITOR OF CISCO'S AT THAT TIME?

11:31:44 21 A. ABSOLUTELY.

11:31:45 22 Q. AND WAS CISCO STILL LOSING SALES TO ARISTA AT THE TIME?

11:31:48 23 A. LOSING SALES OPPORTUNITIES, YES.

11:31:50 24 Q. NOW DID THERE COME A TIME, SIR, IN THE COMPETITION WHERE

11:31:54 25 ARISTA WHERE YOU LEARNED THEY WERE NOT COMPETING FAIRLY WITH

11:31:57 1 YOU?

11:31:57 2 A. YES, THERE WAS.

11:31:58 3 Q. AND WHEN WAS THAT?

11:31:59 4 A. THE FIRST INDICATION WAS IN THE SPRING OF 2014 AS A RESULT

11:32:05 5 OF AN ARTICLE THAT OUR CHIEF LEGAL COUNSEL BROUGHT TO MY

11:32:08 6 ATTENTION WITH SOME CHALLENGES.

11:32:11 7 Q. AND WHAT DID YOU LEARN AT THAT TIME, JUST GENERALLY?

11:32:13 8 A. WELL, WHAT WE LEARNED WAS THAT THE SENIOR MANAGEMENT HAD

11:32:16 9 STATED THAT --

11:32:18 10 Q. THE SENIOR MANAGEMENT OF CISCO OR OF ARISTA?

11:32:20 11 A. I'M SORRY, OF ARISTA, HAD STATED VERY PUBLICLY THAT THEY

11:32:24 12 DIDN'T COMPETE WITH CISCO IN THE TRADITIONAL WAY, TO DO THAT

11:32:28 13 WOULD NOT HAVE GOTTEN GOOD RESULTS, IT WOULD HAVE TAKEN THEM

11:32:32 14 15,000 ENGINEERS AND 15 YEARS TO GET -- TO BE ABLE TO COMPETE

11:32:37 15 AGAINST US IN THAT WAY. SO IT WAS REALLY ONE THAT KIND OF SET

11:32:41 16 OFF THE WARNING SIGNALS AND ALARM BELLS ON IT.

11:32:45 17 AS WE STARTED TO DELVE INTO IT MORE, WE THEN FOUND THAT

11:32:48 18 OTHER PEOPLE AT ARISTA, A CHIEF TECHNICAL OFFICER AS AN

11:32:53 19 EXAMPLE, PRIOR CISCO EMPLOYEE, GOOD PERSON BY THE WAY, HAD

11:32:56 20 ACTUALLY SAID THAT BILL WOULD NEED TO PUT THE ARISTA PRODUCT IN

11:33:00 21 OUR NETWORKS AS ALMOST LIKE A DROP-IN CAPABILITY BECAUSE IT WAS

11:33:04 22 SO CISCO PROPRIETARY IOS-LIKE. I DIDN'T USE PROPRIETARY, BUT

11:33:10 23 HE SAID IOS-LIKE, WHERE THE CUSTOMERS COULD USE THIS, IS VERY

11:33:14 24 IMPORTANT.

11:33:14 25 THEN AS THIS OCCURRED, I REACHED BACK TO MY TEAM AND I

11:33:17 1 SAID, THIS IS REALLY KEY BECAUSE WE COMPETE ON INNOVATIONS, NOT  
11:33:21 2 ON LAWSUITS. AND I PUSHED HIM VERY HARD ABOUT THE WERE PATENTS  
11:33:25 3 THEY WERE BRINGING TO MY ATTENTION REALLY MEANINGFUL, DID THEY  
11:33:28 4 REALLY MAKE A DIFFERENCE IN THE INDUSTRY.

11:33:30 5 AND AS WE DID THAT, I REACHED BACK AND THEY CAME BACK WITH  
11:33:34 6 A DIFFERENT SET OF PATENTS AND APPROACHES. AND THEN I WANTED  
11:33:36 7 TO MAKE SURE THAT BOTH OUR OWN ENGINEERS, PEOPLE IN THE SILICON  
11:33:41 8 VALLEY, THE BUSINESS PRESS AND OVERALL AS A GROUP, WE  
11:33:43 9 CONSIDERED WHAT WE WERE DOING HERE AS NOT ONLY LEGALLY CORRECT,  
11:33:46 10 BECAUSE BY THIS TIME I WAS PRETTY SURE WE WOULD WIN ON THE  
11:33:49 11 LEGAL SIDE, BUT ALSO PERCEPTIONALLY.

11:33:52 12 SO WE TALKED TO OUR TOP ENGINEERS. I WAS HESITANT ON  
11:33:55 13 THIS, BUT IT WAS A VERY SIMILAR TO WHAT -- ONE OTHER TIME WE  
11:33:59 14 SUED A COMPANY CALLED HUAWEI A DECADE BEFORE. SO IT TOOK ABOUT  
11:34:03 15 TEN MONTHS IN TOTAL.

11:34:04 16 Q. AND WHEN YOU FOUND OUT EXACTLY WHAT ARISTA WAS DOING, IN  
11:34:06 17 YOUR VIEW, WAS AT A FAIR WAY TO COMPETE WITH CISCO?

11:34:09 18 A. WELL, IT WAS EXTREMELY UNFAIR AND VERY DISAPPOINTING.

11:34:14 19 Q. AND HOW DID THAT MAKE YOU FEEL ABOUT ARISTA AND THE FORMER  
11:34:17 20 CISCO EMPLOYEES THAT ARE AT ARISTA?

11:34:19 21 A. WELL FIRST, FROM A FINANCIAL PERSPECTIVE, IT COST US  
11:34:22 22 SALES. IT ALSO REALLY HURT BECAUSE AT CISCO WE HAD LITERALLY,  
11:34:27 23 ON OUR BEING BADGE, JUST DO THE RIGHT THING. TREAT OTHERS WITH  
11:34:31 24 RESPECT.

11:34:31 25 I TEND TO TRUST PEOPLE. WE DON'T GO LOOKING TO SEE IF

11:34:34 1 PEOPLE VIOLATE OUR PATENTS OR LOOK FOR OTHER THINGS, WE TEND TO  
11:34:38 2 TRUST PEOPLE IN THE MARKET PRETTY OPENLY. AND IT WAS EXTREMELY  
11:34:42 3 SURPRISING.  
11:34:43 4 IT'S ONE THING FOR THAT TO OCCUR HALFWAY AROUND THE WORLD  
11:34:46 5 WITH PEOPLE YOU DON'T KNOW, IT'S ANOTHER FOR IT TO OCCUR FROM  
11:34:48 6 PEOPLE WHO YOU ARE FRIENDS WITH WHO STOLE FROM YOU, AND THEY  
11:34:53 7 DID STEAL FROM US.  
11:34:54 8 Q. WAS IT A HARD DECISION FOR YOU TO FILE THIS CASE, SIR?  
11:34:57 9 A. IT WAS EXTREMELY HARD. I WAS PROBABLY THE LAST ONE TO  
11:35:01 10 SAY, YOU ARE RIGHT, WE HAVE TO DO THIS.  
11:35:03 11 Q. WHY WAS IT SO HARD TO FILE THE CASE?  
11:35:04 12 A. I BELIEVE ON COMPETING ON INNOVATION, AND I BELIEVE WE  
11:35:08 13 HAVE DONE THAT, I THINK, EXTREMELY WELL.  
11:35:10 14 ALSO, I'M HESITANT THAT WHEN YOU DO SOMETHING, YOU WANT TO  
11:35:14 15 BE SURE YOU LEGALLY ARE CORRECT BUT ALSO PEOPLE PERCEIVE IT TO  
11:35:19 16 BE CORRECT.  
11:35:19 17 AND IT'S HARD ACCUSING PEOPLE WHO YOU ARE FRIENDS WITH,  
11:35:21 18 AND THEY STILL ARE MY FRIENDS, OF STEALING FROM YOU.  
11:35:24 19 Q. SO WHAT YOU ULTIMATELY TIPPED YOU TOWARDS FILING THE CASE,  
11:35:28 20 WHAT WAS THE DECIDING FACTORS, OR WHAT WERE THE DECIDING  
11:35:32 21 FACTORS?  
11:35:32 22 A. I THINK IT'S THE COMBINATION --  
11:35:34 23 MR. VAN NEST: OBJECTION, YOUR HONOR. DISCOVERY.  
11:35:37 24 THIS HAS BEEN PRIVILEGED AND HAS BEEN ASSERTED ON THESE  
11:35:40 25 DISCUSSIONS.

11:35:41 1 MR. DESMARAIS: I'M NOT ASKING FOR WHAT HE LEARNED

11:35:43 2 FROM HIS LAWYERS I'M ASKING ABOUT HIS PERSONAL --

11:35:45 3 THE COURT: I'M NOT GOING ON ALLOW THE WITNESS TO GO

11:35:48 4 INTO THIS AREA IF IT WAS NOT ALLOWED DURING DISCOVERY. THE

11:35:51 5 OBJECTION IS SUSTAINED.

11:35:52 6 MR. DESMARAIS:

11:35:52 7 Q. WAS THE ULTIMATE DECISION TO FILE THE LAWSUIT YOUR

11:35:55 8 DECISION AS CEO SIR?

11:35:57 9 A. YES, IT WAS.

11:35:58 10 Q. NOW YOU SAID EARLIER YOU KNEW JAYSHREE ULLAL FROM HER TIME

11:36:04 11 AT CISCO. PRIOR TO FILING THE LAWSUIT, DID YOU CALL ARISTA OR

11:36:09 12 CALL MS. ULLAL TO DISCUSS?

11:36:11 13 A. NO, I DID NOT.

11:36:13 14 Q. AND WHY NOT?

11:36:14 15 A. THIS WAS SO BLATANT. IT WASN'T A PATENT, IT WAS FOUR

11:36:22 16 MAJOR PATENTS. IT WASN'T JUST OUR PROPRIETARY COMMAND-LINE

11:36:26 17 INTERFACE, IT WAS THE COPYING OUR MANUALS, EVEN THE TYPOS IN

11:36:30 18 THE MANUALS, EVEN THE HELP SCREENS, EVEN THE HIERARCHIES WE

11:36:34 19 USED, ET CETERA.

11:36:34 20 AND IT HAD TO BE KNOWN BECAUSE A NUMBER OF THE ENGINEERS

11:36:38 21 AT ARISTA ACTUALLY DID SOME OF THESE PATENTS, THE LEADERS AT

11:36:43 22 ARISTA ACTUALLY SUPERVISED THOSE ENGINEERS. EVERYONE HAD SEEN

11:36:47 23 IN THIS GROUP AT THE TOP MANAGEMENT, INCLUDING THE BOARD OF

11:36:50 24 DIRECTORS, OUR DECISION TO HOLD HUAWEI ACCOUNTABLE, A CHINESE

11:36:55 25 COMPETITOR WHO VERY BLATANTLY COPIED OUR CLI CAPABILITIES, OUR

11:36:59 1 PATENTS, SAME TYPE OF THING, THE MISTAKES AND SPELLING IN THE  
11:37:04 2 MANUALS, SOURCE CODE, ET CETERA. AND THEY KNEW THAT WE HELD  
11:37:08 3 THEM VERY ACCOUNTABLE FOR DOING THIS, AND THAT INCLUDES EVEN  
11:37:13 4 THEIR BOARD MEMBERS WHO WERE EITHER TESTIFYING IN THE CASE  
11:37:16 5 AGAINST HUAWEI OR HEADED UP OUR LEGAL AND BUSINESS DEVELOPMENT  
11:37:20 6 AND WERE PART OF THIS DECISION ON HOW WE SUED HUAWEI. SO IT  
11:37:24 7 WAS THE BREADTH AND DEPTH.

11:37:26 8 AND IN MY MIND, THERE WAS NO DOUBT THAT THEY KNEW EXACTLY  
11:37:29 9 WHAT THEY WERE DOING AND A PHONE CALL WOULD NOT HAVE GOTTEN THE  
11:37:32 10 RESULTS.

11:37:32 11 AND CANDIDLY, IT'S SHOWN SO FAR. HERE WE ARE APPROACHING  
11:37:36 12 A YEAR AND A HALF, TWO YEARS LATER AND STILL HAVE NOT GOT  
11:37:39 13 ARISTA TO STOP.

11:37:39 14 Q. NOW OVER THE YEARS AS YOU HAVE BEEN LEADING CISCO, HAVE  
11:37:43 15 OTHER CISCO EMPLOYEES LEFT CISCO TO GO TO OTHER COMPANIES TO  
11:37:48 16 COMPETE WITH CISCO?

11:37:49 17 A. UNFORTUNATELY, YES, MANY.

11:37:51 18 Q. CAN YOU NAME A FEW OF THEM?

11:37:52 19 A. YES. I THINK IF YOU WERE TO LOOK ACROSS THE VALLEY, IN  
11:37:56 20 THE AREA OF -- JUNIPER IS A REALLY TOUGH COMPETITOR AND HAS  
11:38:00 21 BEEN FOR OVER A DECADE.

11:38:01 22 Q. ACTUALLY, LET ME STOP YOU THERE AND LET'S JUST MAKE A  
11:38:04 23 QUICK LIST.

11:38:09 24 SO YOU SAID JUNIPER, LET ME WRITE THAT DOWN. TELL US A  
11:38:16 25 LITTLE BIT ABOUT SOME OF THE CISCO FOLKS WHO WENT OVER TO

11:38:20 1 JUNIPER OR ARE RUNNING JUNIPER.

11:38:22 2 A. WELL, I THINK THEIR CEO IS EX-CISCO. THEY PROBABLY HAVE

11:38:29 3 TWO OR FOUR BOARD MEMBERS THAT ARE EX-CISCO, A LOT OF THEIR

11:38:34 4 ENGINEERING TALENT IS EX-CISCO.

11:38:36 5 Q. HAVE YOU HEARD OF A COMPANY CALLED VMWARE?

11:38:39 6 A. YES.

11:38:39 7 Q. TELL US A LITTLE BIT ABOUT VMWARE?

11:38:42 8 A. THEY ARE A VERY IMPORTANT PLAYER IN THIS AREA OF SOFTWARE

11:38:44 9 DEFINED NETWORKS AND APPLICATIONS INFRASTRUCTURE. THEY WERE A

11:38:51 10 PARTNER WITH US WITH DMC AND THEN COMPETED AGAINST US. WE HAVE

11:38:56 11 CISCO EMPLOYEES THERE AT THE CHIEF OPERATING OFFICER LEVEL, AND

11:39:04 12 FOR A WHILE WE HAD A FAIR AMOUNT OF OUR TEAM IN A JOINT

11:39:06 13 DEVELOPMENT WITH VMWARE.

11:39:06 14 Q. HAVE YOU HEARD OF BLUEJEANS NETWORKS?

11:39:08 15 A. YEAH. THAT'S A COMPETITOR, AGAIN, CEO AND MULTIPLE PEOPLE

11:39:12 16 IN THE ORGANIZATION, IN THE VIDEO CONFERENCING, THAT

11:39:17 17 TELEPRESENCE-TYPE OF CAPABILITY THAT WE TALKED ABOUT BEFORE.

11:39:19 18 Q. HAVE YOU HEARD OF VIPTELA?

11:39:22 19 A. YEAH, THEY ARE A GOOD COMPETITOR IN THE AREA OF, I

11:39:28 20 DESCRIBE IT AS WIRELESS CAPABILITY IN USER COMPUTING. AGAIN, A

11:39:33 21 LOT OF CISCO PEOPLE, MAYBE AS MANY AS FIVE OR SIX OR SEVEN OF

11:39:37 22 THEIR TOP MANAGEMENT TEAM AT CISCO, EX-CISCO.

11:39:41 23 Q. HAVE YOU HEARD OF SKYPE?

11:39:42 24 A. YEAH, IT WAS A COMPANY THAT'S A COMPETITOR OF OURS BOUGHT

11:39:47 25 BY MICROSOFT. THE CEO THERE, TONY BATES, A REALLY GOOD PERSON,

11:39:52 1 VERY MUCH A PEER TO JAYSHREE IN TERMS OF THAT, AGAIN IN THE  
11:39:57 2 VIDEO AREA.

11:39:57 3 Q. HAVE YOU EVER HEARD OF AVAYA?

11:39:59 4 A. YEAH, A GOOD COMPETITOR IN THE VOICE SEGMENT OF THE  
11:40:03 5 BUSINESS.

11:40:04 6 I THINK BOTH THE -- A MEMBER OF THE BOARD FROM ARISTA IS  
11:40:09 7 ON THAT, CHARLIE GIANCARLO, CEO THERE FOR A WHILE. AND THEN  
11:40:14 8 KEVIN KENNEDY IS THEIR CEO, THERE FOR A NUMBER OF YEARS. GOOD  
11:40:19 9 COMPETITOR.

11:40:20 10 Q. NOW LET'S STOP THERE. IF WE WANTED TO CONTINUE MAKING A  
11:40:23 11 LIST OF COMPANIES WHERE CISCO EMPLOYEES HAVE LEFT CISCO TO GO  
11:40:27 12 COMPETE AGAINST CISCO AT ANOTHER COMPANY, HOW MANY COMPANIES  
11:40:30 13 COULD WE PUT ON THIS LIST?

11:40:32 14 A. I WOULD SAY PROBABLY SEVERAL DOZEN.

11:40:36 15 Q. NOW LOOKING AT THE LIST THAT WE HAVE MADE, LET'S TAKE THE  
11:40:47 16 TOP TWO JUNIPER AND VMWARE. DO THEY COMPETE WITH YOU IN THE  
11:40:52 17 DATA CENTER ALONG WITH ARISTA?

11:40:53 18 A. ABSOLUTELY. JUNIPER IS VERY TOUGH, AND ROUTING AND  
11:41:01 19 SWITCHING HAVE BEEN PROBABLY THE TOUGHEST COMPETITOR YEAR IN  
11:41:04 20 AND YEAR OUT WITH THE LAST USER INTERFACE.

11:41:08 21 Q. NOW, WOULD YOU CONSIDER THESE PEOPLE AND THE OTHER SEVERAL  
11:41:13 22 DOZEN TOUGH COMPETITORS?

11:41:14 23 A. OH, ABSOLUTELY.

11:41:15 24 Q. AND IN THE DATA CENTER, DO JUNIPER AND VMWARE TAKE SALES  
11:41:19 25 FROM CISCO IN SOME ACCOUNTS?

11:41:21 1 A. ABSOLUTELY.

11:41:22 2 Q. NOW DID YOU SUE ANY OF THESE OTHER COMPANIES SIMPLY

11:41:25 3 BECAUSE CISCO EMPLOYEES LEFT CISCO TO GO TO ANOTHER COMPANY TO

11:41:28 4 COMPETE AGAINST YOU, WHERE YOU LOST SALES?

11:41:31 5 A. NO, WE DID NOT.

11:41:32 6 Q. AS FAR AS YOU KNOW AT THESE OTHER COMPANIES, DID THE

11:41:38 7 FORMER CISCO EMPLOYEES WHO ARE NOW AT THOSE COMPANIES COMPETING

11:41:42 8 AGAINST CISCO, DID THEY TAKE INTEREST CISCO INTELLECTUAL

11:41:45 9 PROPERTY WITH THEM?

11:41:45 10 A. NOT TO THE BEST OF MY KNOWLEDGE, WE HAVE NO INDICATION

11:41:49 11 THAT THAT THEY DID.

11:41:51 12 MR. DESMARAIS: YOUR HONOR, I WOULD LIKE TO MARK THIS

11:41:53 13 AS A DEMONSTRATIVE. WHAT'S THE NEXT NUMBER? 4826.

11:41:58 14 THE COURT: OF COURSE.

11:41:58 15 (PLAINTIFF'S EXHIBIT 4826 WAS MARKED FOR IDENTIFICATION.)

11:42:01 16 MR. DESMARAIS:

11:42:01 17 Q. NOW TURNING THEN BACK TO ARISTA, IS IT NECESSARY FOR

11:42:05 18 ARISTA TO COPY CISCO'S CLI OR USER MANUALS OR OTHER USER

11:42:13 19 INTERFACE FEATURES IN ORDER TO COMPETE WITH CISCO LIKE THESE

11:42:16 20 OTHER COMPANIES?

11:42:17 21 A. BY COPYING YOU ARE SAYING NOT CISCO-LIKE OR THE OVERALL

11:42:23 22 APPROACH, IS IT NECESSARY TO STEAL THE COMMANDS TO INFRINGE

11:42:26 23 UPON OUR PATENTS TO COPY, LITERALLY, THE USER MANUALS, THE

11:42:31 24 HIERARCHIES, THE HELPDESC SCREENS, THE ANSWER IS NO. ALL

11:42:36 25 COMPANIES USE A COMBINATION OF DIFFERENT WAYS OF TAKING THE

11:42:39 1 COMPLEXITY OUT OF THOSE COMPUTER SYSTEMS, AND OTHER PEOPLE HAVE  
11:42:43 2 BEEN ABLE TO DO THIS IN DIFFERENT WAYS WITHOUT BLATANT COPYING  
11:42:48 3 ON CATEGORIES.

11:42:50 4 Q. NOW YOU HAVE BEEN WITH CISCO SINCE 1991. IN THAT TIME,  
11:42:54 5 HOW MANY CASES LIKE ARISTA HAVE YOU SEEN?

11:42:55 6 A. JUST ONE OTHER.

11:42:56 7 Q. IN GENERAL TERMS, WHAT WAS THAT OTHER CASE?

11:43:01 8 A. IT'S A CASE WITH A CHINESE MANUFACTURER CALLED HUAWEI.

11:43:03 9 VERY, VERY SIMILAR TO ARISTA IN THE FACT THAT THEY COPIED OUR  
11:43:07 10 COMMAND LINED INTERFACE CAPABILITIES, A NUMBER OF OUR PATENTS,  
11:43:13 11 SIMILAR IN THAT THEIR USER MANUALS ACTUALLY HAD THE SAME TYPE  
11:43:17 12 OF MISTAKES IN OUR USER MANUALS, WHICH MEANS THEY DIDN'T EVEN  
11:43:22 13 READ THEM OR CORRECT THEM. SIMILAR HELP SCREENS.

11:43:24 14 THEY DID STEAL SOURCE CODE. THEY DID NOT HAVE THE NUMBER  
11:43:27 15 OF EXECUTIVES THAT WERE AT CISCO. SO THEY MAY NOT HAVE BEEN  
11:43:30 16 AWARE OF OUR PATENTS, THEY MAY NOT, THERE WAS NO CASE BEFORE  
11:43:33 17 THAT ON US HOLDING PEOPLE VERY ACCOUNTABLE FOR OUR PROPRIETARY  
11:43:39 18 COMMAND LINE INTERFACE TYPE CAPABILITIES.

11:43:41 19 SO SIMILAR IN MOST WAYS, DIFFERENT IN PERHAPS THAT THEY  
11:43:46 20 DID NOT HAVE THE PRIOR CISCO EXECS OR KNOWLEDGE OF OUR PATENTS  
11:43:51 21 AND OUR PRODUCT STRENGTH LIMITATION.

11:43:52 22 Q. WOULD YOU TURN IN YOUR BINDER TO TRIAL EXHIBIT 4671, IT'S  
11:43:57 23 ALREADY ADMITTED, SO I WILL PUT IT UP ON THE OVERHEAD  
11:44:00 24 PROJECTOR.

11:44:04 25 IS THIS THE COMPLAINT CISCO FILED AGAINST HUAWEI?

11:44:07 1 A. YES, IT IS.

11:44:08 2 Q. WHEN WAS THE COMPLAINT FILED?

11:44:09 3 A. THE DATE UP HERE IN THE RIGHT IS JANUARY 22ND, 2003.

11:44:14 4 Q. AND IS THAT COMPLAINT A PUBLIC DOCUMENT?

11:44:17 5 A. YES, IT IS.

11:44:18 6 Q. LET'S TAKE A LOOK, IF WE COULD, AT WHAT CISCO ALLEGED IN

11:44:24 7 THAT COMPLAINT ON PARAGRAPH 15. WHAT DID CISCO ALLEGE IN THAT

11:44:30 8 COMPLAINT AGAINST HUAWEI, IN THE VERY FIRST SENTENCE OF

11:44:33 9 PARAGRAPH 15?

11:44:33 10 A. IS IT ALL RIGHT TO JUST READ OFF THE SCREEN HERE?

11:44:36 11 THE COURT: IT'S JUST FINE TO LOOK AT IT ON THE

11:44:38 12 SCREEN, YES, ABSOLUTELY.

11:44:39 13 THE WITNESS: SO PARAGRAPH 15, A KEY COMPONENT OF

11:44:42 14 COPYRIGHTED IOS SOFTWARE PROGRAMS IS THE COMMAND-LINE INTERFACE

11:44:44 15 OR CLI.

11:44:47 16 Q. AND THEN IF WE LOOK DOWN AT PARAGRAPH 17, WHAT DOES CISCO

11:44:51 17 ALLEGE AGAINST HUAWEI IN THE VERY FIRST SENTENCE OF

11:44:55 18 PARAGRAPH 17?

11:44:57 19 A. DEFENDANTS HAVE ENGAGED IN WHOLESALE COPYING OF CISCO'S

11:45:01 20 CLI.

11:45:01 21 Q. AND THEN IF WE CONTINUE ON PARAGRAPH 17, WHAT IS THE FIRST

11:45:06 22 COMPLETE SENTENCE IN THE TOP OF PAGE 8 OF THE COMPLAINT SAY

11:45:12 23 ABOUT HUAWEI'S ALLEGATIONS OF COPYING?

11:45:15 24 A. JUST READING THE SENTENCE, "A COMPARISON OF THE

11:45:18 25 COMMAND-LINE INTERFACE OF THE OPERATING SYSTEM FOR QUIDWAY

11:45:20 1 ROUTERS, SWITCHES AND OTHER PRODUCTS THAT USE VRP, AND CISCO'S  
11:45:27 2 CLI REVEALS REPEATED INCIDENTS OF SLAVISH COPYING."

11:45:34 3 Q. SO IS THERE ANY DOUBT THAT THE HUAWEI CASE WAS ABOUT  
11:45:41 4 HUAWEI'S COPYING OF CISCO'S CLI?

11:45:43 5 A. IT WAS ONE OF THE THINGS. BUT AGAIN, IT WAS A VERY BROAD  
11:45:48 6 BLATANT COPYING OF MANY, MANY AREAS, BUT THE CLI WAS A LARGE  
11:45:53 7 COMPONENT, YES.

11:45:53 8 Q. AND HOW DID THE HUAWEI CASE RESOLVE?

11:45:55 9 A. (REDACTED)

11:46:14 10 Q. AND THIS CASE HAS BEEN PENDING FOR A WHILE, HAS ARISTA  
11:46:18 11 AGREED TO STIPULATE?

11:46:19 12 A. NO, THEY HAVE NOT.

11:46:20 13 Q. NOW THERE WAS A TIME WHEN ANOTHER COMPANY, DIGITAL  
11:46:24 14 EQUIPMENT CORPORATION, WAS USING CISCO'S CLI AND USER MANUALS?

11:46:29 15 A. YES, THERE WAS.

11:46:29 16 Q. AND WHY WERE THEY DOING THAT?

11:46:31 17 A. THIS WAS PROBABLY IN THE EARLY 90'S, THEY WERE A CISCO  
11:46:39 18 PARTNER, WE AUTHORIZED THEM TO USE OUR CLI AND OUR USER  
11:46:47 19 MANUALS.

11:46:47 20 Q. AND DID YOU, YOURSELF, SIGN A 1992 AGREEMENT WITH DIGITAL  
11:46:51 21 EQUIPMENT THAT AUTHORIZED THEM TO USE THE USER MANUALS AND THE  
11:46:53 22 CLI?

11:46:53 23 A. YES, I ACTUALLY DID. I HAD FORGOTTEN ABOUT THAT, I KNEW  
11:46:57 24 THAT I DID THE PARTNERSHIP WITH DIGITAL AND IT WAS A  
11:47:00 25 MULTI-YEARS AGREEMENT. I ACTUALLY SIGNED THE AGREEMENT TO DO

11:47:03 1 THAT AND THEN INITIALLED EACH OF THE PAGES THAT WERE THE TERMS  
11:47:06 2 OF THE AGREEMENT.

11:47:06 3 Q. SO IF DIGITAL EQUIPMENT CORPORATION WAS USING CISCO'S CLI,  
11:47:12 4 AND USER MANUALS AFTER 1992, WAS THAT WITH YOUR AUTHORIZATION?

11:47:16 5 A. COMPLETE AUTHORIZATION.

11:47:17 6 Q. AS A PARTNER OF YOURS AT THE TIME?

11:47:20 7 A. ABSOLUTELY.

11:47:20 8 Q. DID ANYONE AT CISCO SIMILARLY AUTHORIZE ARISTA TO USE YOUR  
11:47:24 9 CLI AND YOUR USER MANUALS AND THE OTHER THINGS THAT ARE ACCUSED  
11:47:28 10 OF IN THIS CASE?

11:47:28 11 A. NO, WE DID NOT.

11:47:30 12 Q. NOW HAS ARISTA'S COPYING OF CISCO'S CLI AND USER  
11:47:35 13 INTERFACES FEATURES AND MANUALS AND ALL OF THAT CAUSED CISCO  
11:47:39 14 ANY HARM?

11:47:39 15 A. PRETTY DRAMATIC HARM.

11:47:41 16 Q. JUST BRIEFLY, BECAUSE WE JUST HEARD FROM A DAMAGES EXPERT,  
11:47:45 17 I'M NOT ASKING YOU TO QUANTIFY IT, BUT JUST BRIEFLY, WHAT KIND  
11:47:49 18 OF HARM HAS ARISTA'S COPYING HARMED CISCO?

11:47:51 19 A. SO I TEND TO THINK OF IT AS A SALES GUY, BECAUSE I'M A  
11:47:53 20 SALES GUY AT HEART.

11:47:55 21 WHAT IT ALLOWED THEM TO DO WAS TO GET INTO ACCOUNTS  
11:47:58 22 EARLIER THAN THEY WOULD HAVE BEEN ABLE TO OTHERWISE. THEY WERE  
11:48:01 23 ABLE TO GO IN AND SAY, I'M NOT JUST CISCO-LIKE, LITERALLY YOU  
11:48:04 24 CAN DROP IN THE PRODUCTS, AND IT'S CISCO, AS IT TURNED OUT.  
11:48:07 25 AND IT ALLOWED THEM MUCH QUICKER ACCESS IN TERMS OF TIME

11:48:10 1 TO MARKET. AND IT HURT OUR IMAGE IN TERMS OF PEOPLE SAYING,

11:48:15 2 WAIT A MINUTE, THIS COMPANY IS INNOVATIVE AND THEY ARE ACTUALLY

11:48:18 3 MOVING FASTER THAN YOU ARE FROM THAT PERSPECTIVE.

11:48:20 4 AND IT IMPACTED PROBABLY OUR REVENUES AND SERVICES IN A

11:48:25 5 BIG WAY IN MANY OF THE LARGE ACCOUNTS.

11:48:26 6 Q. AND YOUR PRICES AS WELL?

11:48:29 7 A. WHEN SOMEBODY GETS TO MARKET A LITTLE BIT QUICKER THAN YOU

11:48:33 8 DO WITH THE CATEGORY, AND IN MY OPINION TAKES WHAT WE HAD

11:48:40 9 INVESTED WHICH WAS A HUGE AMOUNT, TO GAIN A COMPETITIVE

11:48:43 10 ADVANTAGE, YOU THEN HAVE TO COMPETE MORE ON PRICE THAN YOU

11:48:43 11 WOULD OTHERWISE. THE MARGINS WERE GOOD, THE OTHER COMPANIES

11:48:48 12 WERE GOOD, BUT THEY WOULD HAVE DONE A LOT BETTER WITHOUT THIS,

11:48:48 13 FOR US.

11:48:51 14 Q. THANK YOU, MR. CHAMBERS.

11:48:52 15 MR. DESMARAIS: NO FURTHER QUESTIONS, YOUR HONOR.

11:48:54 16 THE COURT: THANK YOU, SIR.

11:48:55 17 CROSS-EXAMINATION?

11:49:03 18 MR. VAN NEST: WE'VE GOT SOME BINDERS, YOUR HONOR.

11:49:05 19 THE COURT: OKAY. I'VE COME TO LOOK FORWARD TO IT.

11:49:23 20 MR. VAN NEST: MAY I PROCEED, YOUR HONOR?

11:49:25 21 THE COURT: YES PLEASE.

11:49:27 22 **CROSS-EXAMINATION**

11:49:28 23 BY MR. VAN NEST:

11:49:28 24 Q. GOOD MORNING MR. CHAMBERS.

11:49:29 25 A. GOOD MORNING, MR. VAN NEST.

11:49:30 1 Q. EARLIER IN THIS LAWSUIT YOU FILED A DECLARATION WITH THE  
11:49:33 2 COURT CLAIMING TO HAVE NO UNIQUE INFORMATION ABOUT THE CASE;  
11:49:37 3 RIGHT?

11:49:37 4 A. I'M SORRY, UNIQUE IN TERMS, CAN YOU CLARIFY A LITTLE BIT  
11:49:44 5 FURTHER.

11:49:44 6 Q. YOU FILED A WRITTEN DECLARATION WITH THE COURT CLAIMING TO  
11:49:48 7 HAVE NO UNIQUE INFORMATION RELEVANT TO THE CASE THAT COULD NOT  
11:49:54 8 BE OBTAINED BY OTHER CISCO EMPLOYEES; RIGHT?

11:49:57 9 A. I THINK THE ANSWER WOULD BE PROBABLY, I'M NOT SURE OF ALL  
11:50:04 10 OF IMPLICATIONS OF WHAT YOU ARE ASKING ME ON IT.

11:50:06 11 Q. AND IN THAT DECLARATION, YOU TOLD THE COURT UNDER OATH  
11:50:12 12 THAT "YOUR KNOWLEDGE OF THE DETAILS OF THIS LAWSUIT IS LIMITED  
11:50:16 13 TO COMMUNICATIONS THAT I HAVE HAD WITH COUNSEL FOR CISCO;"  
11:50:21 14 RIGHT? THAT'S WHAT YOU SAID UNDER OATH?

11:50:23 15 A. IN TERMS OF THE DETAILS OF THE LAWSUIT AND CERTAIN  
11:50:27 16 CATEGORIES, YES.

11:50:28 17 THERE ARE OBVIOUSLY THINGS THAT IN THE MARKET YOU HAVE IN  
11:50:31 18 TERMS OF EXPERIENCE WITH CUSTOMERS, ET CETERA.

11:50:34 19 Q. BUT YOU SIGNED A DECLARATION, IN FACT, MR. CHAMBERS, THAT  
11:50:38 20 SAID YOUR KNOWLEDGE OF THE DETAILS OF THIS LAWSUIT IS LIMITED  
11:50:42 21 TO COMMUNICATIONS YOU HAD WITH COUNSEL FOR CISCO; RIGHT? YOU  
11:50:46 22 SAID THAT?

11:50:47 23 A. WHATEVER IS IN THE DECLARATION, I WOULD STAND BY, YES.

11:50:51 24 Q. OKAY. AND THEN YOU TESTIFIED THAT ALL YOU KNOW ABOUT WHAT  
11:50:56 25 CISCO IS CLAIMING IN THIS CASE IS ENTIRELY BASED ON WHAT YOUR

11:51:01 1 LAWYERS TOLD YOU; RIGHT?

11:51:02 2 A. I'M NOT SURE HOW TO ANSWER THAT. IN TERMS OF WHAT I HEAR

11:51:13 3 FROM CUSTOMERS?

11:51:14 4 Q. DO YOU DENY SAYING THAT, MR. CHAMBERS?

11:51:17 5 A. IF IT'S IN THE DECLARATION, I VERY MUCH STICK BY IT.

11:51:20 6 MR. VAN NEST: YOUR HONOR, I WOULD LIKE TO PLAY FROM

11:51:23 7 MR. CHAMBERS'S DEPOSITION AT THIS POINT, PAGE 46, LINE 25

11:51:26 8 THROUGH PAGE 47, LINE 8.

11:51:28 9 THE COURT: GO AHEAD.

11:51:29 10 MR. VAN NEST: PLEASE PLAY THE CLIP.

11:51:31 11 **(THE VIDEO DEPOSITION OF JOHN CHAMBERS WAS PLAYED INTO THE**

11:52:04 12 **RECORD.)**

11:52:04 13 Q. YOU STAND BY THAT TESTIMONY, MR. CHAMBERS?

11:52:07 14 A. YES, ESPECIALLY THE SECOND PART WHERE WHEN YOU TALKED

11:52:10 15 ABOUT IT AND I DIDN'T UNDERSTAND THE FRAMING OF THE QUESTION.

11:52:12 16 IN TERMS OF UNDERSTANDING THAT THERE HAD BEEN DELIBERATE

11:52:18 17 THEFT OF CLI CAPABILITIES FROM CISCO, OUR COMMANDS, OUR, IF YOU

11:52:23 18 WILL, OUR MANUALS, OUR HIERARCHIES, OUR USER INTERFACES,

11:52:28 19 ET CETERA, HELP INTERFACES, THAT I LEARNED FROM THE COUNSELS

11:52:32 20 AND THE OTHER DIRECTIONS, AND SO THE MATERIAL THAT I QUOTED IN

11:52:36 21 THAT SECOND PART WAS PRETTY MUCH ACCURATE.

11:52:38 22 Q. OKAY. AND ALL THAT YOU GOT TALKING WITH YOUR LAWYERS;

11:52:41 23 RIGHT?

11:52:41 24 A. ALL THE MATERIAL IN TERMS OF KNOWING THAT THERE WAS

11:52:44 25 VIOLATIONS FROM THE CLI PERSPECTIVE, ET CETERA, YES.

11:52:47 1 Q. OKAY. NOW MR. CHAMBERS, THERE'S A MARKET TRANSITION UNDER  
11:52:51 2 WAY IN NETWORKING FROM A MORE TRADITIONAL NETWORKING TO WHAT  
11:52:57 3 YOU CALL SOFTWARE DEFINED NETWORKING; RIGHT?  
11:52:59 4 A. THAT IS CORRECT.  
11:53:00 5 Q. AND YOU CONSIDER THAT TRANSITION TO BE A VERY IMPORTANT  
11:53:02 6 TRANSITION IN NETWORKING; ISN'T THAT THE CASE?  
11:53:05 7 A. IT'S A VERY IMPORTANT ONE, YES.  
11:53:07 8 Q. AND CERTAINLY THIS TRANSITION TO SOFTWARE DEFINED  
11:53:10 9 NETWORKING IS VERY IMPORTANT TO CISCO; RIGHT?  
11:53:14 10 A. THE TRANSITION WITH THAT AND APPLICATIONS OF THE  
11:53:19 11 INFRASTRUCTURE COMBINED, YES, IT IS.  
11:53:20 12 Q. AND YOU STATED PUBLICLY THAT CISCO WAITED TOO LONG TO  
11:53:24 13 ADDRESS THIS TRANSITION IN THE MARKET; RIGHT?  
11:53:26 14 A. THAT IS TRUE.  
11:53:27 15 Q. AND THAT CISCO WAS TOO SLOW TO RECOGNIZE THAT A  
11:53:34 16 TRANSITION, A MAJOR TRANSITION WAS COMING TO THE MARKET IN  
11:53:37 17 CONNECTION WITH SOFTWARE DEFINED NETWORKING, CORRECT?  
11:53:40 18 A. I WOULD HAVE TO LOOK AT THE CONTEXT THAT I SAID THAT IN,  
11:53:44 19 BUT THAT CONCEPT WOULD PROBABLY BE SOMETHING I WOULD NOT  
11:53:47 20 DISAGREE WITH.  
11:53:49 21 Q. OKAY. AND IN FACT, YOU COMPARED THIS TRANSITION AT THIS  
11:53:52 22 TIME BEGINNING OF VOICEOVER INTERNET OR USING VIDEO OVER THE  
11:53:54 23 INTERNET, BIG TRANSITIONS; RIGHT?  
11:53:56 24 A. THAT'S FAIR.  
11:53:57 25 Q. AND YOU VIEWED ARISTA AS A VERY STRONG COMPETITOR IN THIS

11:54:03 1 SOFTWARE DEFINED NETWORK MARKET; RIGHT?

11:54:05 2 A. ONE OF MULTIPLE COMPETITORS IN THIS MARKET, YES.

11:54:07 3 Q. AND I THINK YOU DESCRIBED IN YOUR DIRECT EXAMINATION

11:54:11 4 ARISTA IS A GOOD COMPETITOR, A TOUGH COMPETITOR; RIGHT?

11:54:14 5 A. THAT'S CORRECT.

11:54:15 6 Q. AND CERTAINLY THEY WERE ON YOUR RADAR, ARISTA, BY LATE

11:54:19 7 2010, CORRECT?

11:54:20 8 A. THAT WOULD BE PROBABLY PRETTY ACCURATE, THAT'S WHEN THEY

11:54:25 9 BROUGHT IN THE NEW HIGH END SWITCH, AND THE TRULY -- IT WAS

11:54:30 10 2011 WHERE WE BEGAN TO SEE THEM MORE IN THE DATA CENTER

11:54:33 11 RESOLVE.

11:54:33 12 Q. AND YEAH. AND IN LATE 2010, ONE OF THE LEADING INDUSTRY

11:54:39 13 PUBLICATIONS FOUND THAT ARISTA OUTPERFORMED CISCO IN

11:54:45 14 HEAD-TO-HEAD COMPETITION IN TESTING THEY HAD DONE; RIGHT?

11:54:51 15 A. AND WHAT WAS THE DATE AGAIN, SIR?

11:54:53 16 Q. 2010.

11:54:56 17 A. I WOULD HAVE TO SEE THE DATA. IF YOU ARE TALKING ABOUT A

11:54:59 18 LOW END LATENCY PINPOINT PRODUCT, THAT MAY BE ACCURATE. THERE

11:55:05 19 PROBABLY, DEPENDING ON WHAT TYPE OF ANALYSIS YOU ARE DOING WHEN

11:55:08 20 YOU DO COMPUTER TESTING, IT DEPENDS ON YOUR APPLICATIONS, WHICH

11:55:12 21 INDUSTRY YOU ARE GOING WITH, ET CETERA.

11:55:15 22 SO I COULDN'T RESPOND TO A GENERAL ONE. I WOULD SAY IF

11:55:18 23 YOU ARE TALKING LOW LATENCY FOR A PRODUCT, THE ARISTA HAD SOME

11:55:21 24 ADVANTAGES IN THAT AREA.

11:55:22 25 Q. LET'S LOOK AT DOCUMENT -- EXHIBIT NUMBER 5416. IT'S IN

11:55:27 1 ONE OF THOSE BINDERS WE HANDED YOU, MR. CHAMBERS.

11:55:29 2 A. OKAY. THANK YOU.

11:55:30 3 Q. 5416. DO YOU HAVE IT THERE BEFORE YOU?

11:55:36 4 A. YES, I DO.

11:55:38 5 Q. DO YOU RECOGNIZE IT AS AN ARTICLE BY *NETWORK WORLD* IN

11:55:43 6 EARLY 2010, JANUARY?

11:55:46 7 A. JUST GIVE ME A SECOND. JANUARY 18, 2010, AND IT IS

11:55:52 8 *NETWORK WORLD*, YES.

11:55:54 9 Q. AND THAT'S A PUBLICATION, SOMETIMES YOU GIVE INTERVIEWS TO

11:55:57 10 THAT COVER THE NETWORKING FIELD?

11:55:59 11 A. THAT IS CORRECT.

11:56:00 12 Q. YOU REVIEW THAT FROM TIME TO TIME?

11:56:02 13 A. THAT IS CORRECT.

11:56:03 14 Q. DO YOU RECALL LEARNING IN 2010 THAT CISCO HAD BEATEN --

11:56:07 15 EXCUSE ME, ARISTA HAD BEATEN CISCO IN A HEAD-TO-HEAD TEST

11:56:11 16 PUBLISHED HERE BY *NETWORK WORLD*?

11:56:12 17 A. I DON'T KNOW THAT IF I WOULD RECALL THE SPECIFICS ON THAT.

11:56:16 18 YOU FACE VARIOUS COMPETITORS, SOMETIMES WE WIN, SOMETIMES WE

11:56:22 19 WOULD NOT, IN KEY TECHNOLOGY AREAS. IF THEY BEAT US IN THE

11:56:24 20 TEST AND THAT'S WHAT I SAID HERE, THEN THAT'S WHAT I ACCEPT AS

11:56:28 21 A FACT.

11:56:28 22 MR. VAN NEST: YOUR HONOR, I WOULD OFFER 5416 IN

11:56:30 23 EVIDENCE.

11:56:30 24 THE COURT: IS THERE ANY OBJECTION?

11:56:32 25 MR. DESMARAIS: NO, YOUR HONOR.

11:56:32 1 THE COURT: IT WILL BE ADMITTED.

11:56:35 2 (DEFENDANT'S EXHIBIT 5416 WAS ADMITTED INTO EVIDENCE.)

11:56:35 3 BY MR. VAN NEST:

11:56:35 4 Q. THIS IS THE *NETWORK WORLD* ARTICLE, AND AGAIN *NETWORK WORLD*

11:56:38 5 COVERS THE NETWORKING BUSINESS, MR. CHAMBERS?

11:56:42 6 A. YES, IT DOES.

11:56:43 7 Q. AND RIGHT THERE, THIS IS AN ARTICLE IN JANUARY OF 2010,

11:56:47 8 CORRECT, WE HAVE THAT DATE RIGHT UNDER THE HEADER?

11:56:49 9 A. YES, WE DO, UH-HUH.

11:56:51 10 Q. AND LET'S BLOW UP THAT FIRST PARAGRAPH.

11:56:56 11 "AS DATA CENTER MANAGERS CONSOLIDATE AND VIRTUALIZE THEIR

11:57:01 12 SERVERS, THE NEXT ORDER OF BUSINESS BECOMES MOVING ALL THAT

11:57:05 13 TRAFFIC. ENTER TOP OF RACK DATA CENTER SWITCHES THAT OFFER

11:57:08 14 SPEED, SCALEABILITY, REDUNDANCY, VIRTUALIZATION, SUPPORT AND

11:57:13 15 OTHER FEATURES NOT AVAILABLE IN GARDEN VARIETY ETHERNET

11:57:16 16 SWITCHES."

11:57:18 17 THEY ARE TALKING ABOUT THIS TRANSITION TO SOFTWARE DEFINED

11:57:21 18 NETWORKING IN THE CLOUD; RIGHT?

11:57:23 19 A. I WOULD ASSUME THAT IS LOGICAL THERE, I HAVEN'T READ THE

11:57:29 20 ARTICLE, OR AT LEAST I HAVEN'T READ IT RECENTLY, IF I HAVE EVER

11:57:33 21 READ IT. SO I'M JUST, BASED UPON YOUR COMMENTS, THE ONE

11:57:36 22 PARAGRAPH HERE, YES.

11:57:38 23 Q. AND -- OKAY.

11:57:38 24 AND THE NEXT PARAGRAPH DOWN TALKS ABOUT A TEST OF 24, THIS

11:57:43 25 IS THE -- THIS TEST ANALYZES SWITCHES, THERE WE GO. AT LEAST

11:57:48 1 2410 GIGABIT INTERFACES FROM ARISTA, BLADE, CISCO, DELL, AND  
11:57:54 2 OTHERS; RIGHT?

11:57:55 3 A. THAT IS CORRECT.

11:57:56 4 Q. AND THEY CLAIM THEY COMPARED THESE IN TEN DIFFERENT WAYS  
11:57:59 5 AND SUBJECTED THEM TO MONTHS OF GRUELLING PERFORMANCE TESTS;  
11:58:05 6 RIGHT?

11:58:05 7 A. YES, IT DOES.

11:58:06 8 Q. AND THEN THEIR CONCLUSION WAS, "WITH THE BEST COMBINATION  
11:58:10 9 OF FEATURES AND PERFORMANCE" -- EXCUSE ME.

11:58:14 10 "WHILE EACH OFFERED SOME STANDOUT QUALITIES, WE'RE  
11:58:17 11 SINGLING OUT ARISTA'S DCS-7124 AND BLADE'S G8124 AS TOP PICKS.  
11:58:27 12 WITH THE BEST COMBINATION OF FEATURES AND PERFORMANCE,  
11:58:29 13 ESPECIALLY IN THE AREAS OF LATENCY AND JITTER, BOTH SWITCHES  
11:58:33 14 EARN CLEAR CHOICE AWARDS."

11:58:35 15 DO YOU SEE THAT?

11:58:35 16 A. YES, I DO.

11:58:36 17 Q. IS THIS THE TYPE OF THING THAT YOUR STAFF WOULD BRING TO  
11:58:39 18 YOUR ATTENTION FROM TIME TO TIME, MR. CHAMBERS?

11:58:42 19 A. PERHAPS FROM TIME TO TIME.

11:58:44 20 AGAIN, I WOULD VIEW IT AS MY EARLIER COMMENTS, I WOULD  
11:58:47 21 VIEW THIS AS A PINPOINT PRODUCT A GOOD COMPETITOR IN LOW  
11:58:51 22 LATENCY. SO YES, THIS IS A GOOD PRODUCT.

11:58:53 23 Q. AND BY 2011 YOU WERE ACTUALLY SEEING A LOT ABOUT ARISTA IN  
11:58:58 24 THE VERY SPECIFIC CUSTOMER BRIEFINGS YOU RECEIVED BEFORE  
11:59:01 25 CUSTOMER MEETINGS; IS THAT RIGHT?

11:59:03 1 A. YEAH. THEY WERE MAKING THE RADAR SCREEN PRETTY GOOD.

11:59:06 2 EACH TIME YOU GO INTO CUSTOMERS, YOU TALK TO WHAT IS WORKING

11:59:09 3 FOR US AND WHAT WE HAVE TO DO BETTER. YOU ALSO SAY WHO ARE THE

11:59:13 4 KEY COMPETITORS, AND THEY WERE ONE OF THE COMPETITORS. 2011

11:59:16 5 WAS PROBABLY THE FIRST TIME I BEGAN TO SEE THEM ON A LARGER

11:59:19 6 SCALE.

11:59:20 7 Q. AND FROM TIME TO TIME BACK WHEN YOU WERE CEO, YOU ACTUALLY

11:59:23 8 DID VISIT CUSTOMERS AND TALK WITH CUSTOMER; RIGHT?

11:59:25 9 A. ALL THE TIME.

11:59:26 10 Q. ESPECIALLY THE BIG CUSTOMERS?

11:59:27 11 A. BIG AND SMALL, YES.

11:59:29 12 Q. AND SO IF ONE OF YOUR TOP SALES FOLKS THOUGHT THEY WERE IN

11:59:34 13 TROUBLE OR CONCERNED OR WORRIED, THAT MIGHT BE AN OCCASION TO

11:59:37 14 BRING MR. CHAMBERS IN TO TALK WITH THE CUSTOMER; RIGHT?

11:59:39 15 A. I MET WITH THE CUSTOMERS ON A REGULAR BASIS, BOTH

11:59:45 16 CUSTOMERS THAT WE WERE WINNING IN AND CUSTOMERS WHERE WE HAD

11:59:47 17 GOOD COMPETITORS IN, SO YES.

11:59:49 18 Q. WOULD YOU OPEN YOUR BINDER UP MR. CHAMBERS TO 5495. DO

12:00:06 19 YOU HAVE IT THERE, MR. CHAMBERS? AND I'M GOING TO SHOW IT ON

12:00:08 20 THE SCREEN, EITHER WAY.

12:00:09 21 THIS IS THE TYPE OF BRIEFING THAT YOU RECEIVED

12:00:10 22 PERIODICALLY BEFORE CUSTOMER MEETINGS; RIGHT?

12:00:12 23 A. YES, I GET PROBABLY TEN OF THESE A DAY ON A VARIOUS DAY

12:00:18 24 OUT IN THE FIELD, SO IT WAS VERY CLASSIC IN TERMS OF THE

12:00:21 25 FORMAT.

12:00:21 1 Q. AND THIS IS THE FORMAT YOU ARE USED TO SEEING AND THE  
12:00:24 2 FORMAT YOU WOULD REVIEW ON THE WAY TO SEEING THE CUSTOMER?  
12:00:24 3 A. YES, SIR.  
12:00:27 4 Q. AND THIS CUSTOMER IS MICROSOFT?  
12:00:28 5 A. YES, IT IS.  
12:00:29 6 Q. THAT'S A BIG CUSTOMER?  
12:00:30 7 A. YES, IT IS. BIG CUSTOMER, KEVIN TURNER, VERY IMPORTANT  
12:00:33 8 GUY.  
12:00:33 9 Q. OKAY. AND THE DATE OF THIS IS MARCH OF 2011; RIGHT?  
12:00:35 10 A. THAT IS CORRECT.  
12:00:36 11 Q. AND IF WE GO DOWN TO THE BOTTOM, THERE'S A CATEGORY "JOHN  
12:00:40 12 AND CISCO'S OBJECTIVES," DO YOU SEE THAT?  
12:00:42 13 A. I DO.  
12:00:43 14 Q. AND THE OBJECTIVE THERE, THE VERY FIRST OBJECTIVE WAS TO  
12:00:48 15 BLOCK ARISTA FROM GAINING A FIRST PRODUCTION DEPLOYMENT AT  
12:00:53 16 MICROSOFT IN WHAT IS CALLED THE "SPINE" A STRATEGIC NETWORK  
12:00:58 17 LAYER IN THE MEGASCALE DATA CENTER; DO YOU SEE THAT?  
12:01:01 18 A. I DO.  
12:01:02 19 Q. AND THAT WAS YOUR STAFF TELLING YOU THAT WAS AT LEAST ONE  
12:01:06 20 OF THE OBJECTIVES OF YOUR MEETING, THAT'S THE PURPOSE FOR THAT?  
12:01:10 21 A. THAT WOULD PROBABLY BE THE FIELD TELLING US THAT. WHAT  
12:01:13 22 THEY DO IS TELL YOU, HERE'S WHAT WE WOULD LIKE TO DO IN THE  
12:01:16 23 MEETINGS, AND WHO WOULD BE THERE. IT DOESN'T MEAN I  
12:01:20 24 NECESSARILY DID WHAT THEY ASKED ME TO.  
12:01:21 25 Q. SURE. YOU'RE THE BOSS, RIGHT? YOU COULD DO WHAT YOU

12:01:24 1 WANT.

12:01:24 2 A. MOST OF THE TIME.

12:01:25 3 Q. GOING A LITTLE FURTHER DOWN, THERE WAS SPECIFIC DISCUSSION

12:01:28 4 HERE ABOUT AN AWARD, "A POSSIBLE AWARD, MICROSOFT SEARCH, IT'S

12:01:34 5 RIGHT THERE AT THE BOTTOM OF THAT FIRST PAGE, MICROSOFT SEARCH

12:01:38 6 IS ON THE VERGE OF DEPLOYING A \$2 MILLION INVESTMENT WITH

12:01:42 7 ARISTA WHICH WOULD REPRESENT A SIGNIFICANT BEACHHEAD."

12:01:45 8 AND HE GOES ON TO DESCRIBE HOW BIG THE MICROSOFT SALES

12:01:50 9 OPPORTUNITY IS FOR CISCO, \$100 MILLION ANNUAL FRANCHISE; DO YOU

12:01:55 10 SEE THAT.

12:01:55 11 A. YES, I DO.

12:01:56 12 Q. NOW YOUR STAFF ALSO INCLUDES YOU IN ON WHAT THEY THOUGHT

12:02:02 13 WAS HAPPENING IN THIS COMPETITION BETWEEN CISCO AND ARISTA;

12:02:06 14 RIGHT?

12:02:06 15 A. THAT IS THEIR PERSPECTIVE, YES.

12:02:09 16 Q. OKAY. LET'S GO TO THE NEXT BULLET, TOP OF THE NEXT PAGE.

12:02:13 17 AND I WILL SHOW IT ON THE SCREEN, MR. CHAMBERS, FOR YOU.

12:02:16 18 THIS IS YOUR STAFF TALKING TO YOU, AND THEY SAID "ARISTA

12:02:18 19 IS OUT PERFORMING CISCO ON PRICE, PRODUCT, ROAD MAP AND

12:02:26 20 VISION."

12:02:26 21 RIGHT? THAT'S WHAT YOUR STAFF IS TELLING YOU IN 2011,

12:02:31 22 CORRECT?

12:02:31 23 A. AGAIN, I'M NOT DRAWING A DISTINCTION OTHER THAN IT'S THE

12:02:36 24 SALES TEAM WHO WRITES THIS UP. SO IT'S THE LOCAL SALES TEAM

12:02:39 25 SAYING THIS, THAT IS CORRECT.

12:02:40 1 Q. OKAY. AND THEY'RE IDENTIFYING PRICE, PRODUCT, ROAD MAP,  
12:02:45 2 AND VISION AS THE THINGS IN WHICH ARISTA IS AHEAD OF CISCO AT  
12:02:50 3 THIS TIME; RIGHT?  
12:02:50 4 A. THAT IS THEIR PERSPECTIVE, YES.  
12:02:51 5 Q. THAT PRETTY MUCH COVERS THE WATERFRONT, DOESN'T IT?  
12:02:55 6 A. IT COVERS A LOT OF AREAS; DO YOU WANT ME TO COMMENT IN  
12:02:58 7 TERMS OF MY VIEW ON THIS OR --  
12:03:00 8 Q. LET'S GO ON, MR. CHAMBERS.  
12:03:01 9 YOU WILL GET A CHANCE WHEN MR. DESMARAIS GETS BACK UP TO  
12:03:07 10 ANSWER WHATEVER QUESTIONS HE THINKS ARE LEFT.  
12:03:09 11 I WANT TO GO TO THE NEXT SENTENCE BECAUSE IT SAYS, "BASED  
12:03:12 12 ON MULTIPLE MISSED CISCO ROAD MAP COMMITMENTS IN THE DATA  
12:03:16 13 CENTER, MICROSOFT FEEL LESS RISK WITH UNPROVEN ARISTA;" DO YOU  
12:03:20 14 SEE THAT.  
12:03:20 15 A. YES, I DO.  
12:03:21 16 Q. NOW A MULTIPLE -- A ROAD MAP COMMITMENT IS A COMMITMENT BY  
12:03:27 17 CISCO THAT WE ARE GOING TO HAVE A PRODUCT READY FOR YOU AT A  
12:03:30 18 CERTAIN TIME; RIGHT?  
12:03:30 19 A. YOU SHARE THAT WITH YOUR CUSTOMERS. MOST OF THE TIMES,  
12:03:33 20 YOU HIT IT, SOMETIMES YOU DON'T.  
12:03:35 21 Q. AND THAT'S WHAT THAT MEANS. IN OTHER WORDS, THE ROAD MAP  
12:03:38 22 COMMITMENT MEANS I'M GOING TO HAVE A PRODUCT READY FOR YOU IN A  
12:03:41 23 CERTAIN TIME OR IN A CERTAIN RANGE; RIGHT?  
12:03:43 24 A. THAT'S WHAT THE ROAD MAP IS ALL ABOUT. THAT IS CORRECT.  
12:03:45 25 Q. AND YOU WERE BEING TOLD BY YOUR STAFF THAT CISCO HAD

12:03:48 1 ALREADY MISSED MULTIPLE ROAD MAP COMMITMENTS, AND THAT'S WHY  
12:03:53 2 MICROSOFT WAS ABOUT TO AWARD BUSINESS TO ARISTA.  
12:03:56 3 THAT'S WHAT YOU UNDERSTOOD; RIGHT?  
12:03:57 4 A. THAT'S WHAT THE FIELD TEAM WOULD SAY ON THIS, CORRECT.  
12:04:03 5 MR. VAN NEST: YOUR HONOR, I'M ABOUT TO GO ON TO  
12:04:05 6 ANOTHER DOCUMENT.  
12:04:06 7 THE COURT: THIS WOULD BE A GOOD TIME TO STOP THEN.  
12:04:06 8 ALL RIGHT. WE WILL RETURN AFTER LUNCH.  
12:04:11 9 LADIES AND GENTLEMEN, LET'S COME BACK AT 1:05.  
12:04:21 10 (RECESS FROM 12:04 P.M. UNTIL 1:05 P.M.)  
01:06:48 11 (JURY OUT AT 1:06 P.M.)  
01:06:48 12 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE  
01:06:50 13 SEATED. WE ARE ON THE OUTSIDE THE PRESENCE OF THE JURY.  
01:06:54 14 MR. VAN NEST, YOU HAD AN ISSUE?  
01:06:55 15 MR. VAN NEST: YES. WE DO, YOUR HONOR.  
01:06:57 16 WE HAVE TWO ISSUES. ONE THAT REQUIRES A WARNING, I THINK,  
01:07:00 17 AND THE OTHER THAT REQUIRES STRIKING SOME TESTIMONY.  
01:07:03 18 THIS MORNING MR. DESMARAIS ELICITED AGAIN, IN VIOLATION OF  
01:07:06 19 THE MOTION IN LIMINE, TESTIMONY ABOUT PATENTS IN PLURAL, AND HE  
01:07:12 20 WENT BEYOND THAT TO HAVE MR. CHAMBERS TESTIFY THAT ALL THE  
01:07:16 21 INVENTORS WERE PEOPLE FORMERLY AT CISCO, AND NOW AT ARISTA, AND  
01:07:20 22 SO THEY KNOW ABOUT OUR TECHNOLOGY.  
01:07:22 23 THAT TESTIMONY WAS GIVEN TOWARDS THE END OF HIS DIRECT  
01:07:27 24 EXAMINATION, AND SUPPOSEDLY JUSTIFYING A LAWSUIT.  
01:07:33 25 OBVIOUSLY, YOU'VE RULED OUT THE ITC. I DIDN'T WANT TO GET

01:07:36 1 UP AND MAKE A BIG DEAL ABOUT THAT IN FRONT OF THE JURY, AND I  
01:07:40 2 DON'T THINK I SHOULD BE REQUIRED TO, IT WAS COMPLETELY  
01:07:43 3 IMPROPER, AND PARTICULARLY TO HAVE MR. CHAMBERS STATE THAT  
01:07:46 4 THESE PEOPLE KNOW THE TECHNOLOGY IN OUR PATENTS BECAUSE THEY  
01:07:48 5 WERE AT CISCO.

01:07:49 6 THE ONE PATENT REMAINING IN THIS CASE HAS TWO INVENTOR,  
01:07:55 7 NEITHER OF WHOM HAS EVER WORKED AT ARISTA, AND THEY KNOW THAT.

01:07:59 8 SO I WOULD JUST LIKE COUNSEL CAUTIONED OR INSTRUCTED THAT  
01:08:02 9 THEY CAN'T GO ANYWHERE NEAR THIS ON REDIRECT WITH MR. CHAMBERS,  
01:08:06 10 IT WAS IMPROPER TO DO SO IN THE FIRST PLACE.

01:08:08 11 THE SECOND ISSUE IS WE HEARD, NEAR THE END OF  
01:08:12 12 MR. CHAMBERS'S TESTIMONY, TESTIMONY ABOUT A LICENSE TO THE CLI  
01:08:17 13 BETWEEN CISCO AND DEC. WELL, WE ASKED A SPECIFIC 30 (B) (6)  
01:08:22 14 QUESTION ABOUT THE EXISTENCE OF NEGOTIATION CONTENTS OR TERMS  
01:08:28 15 OF ANY LICENSES TO THE CLI BETWEEN CISCO AND ANY THIRD PARTY.  
01:08:34 16 THEY DESIGNATED MR. LANG ON THAT ISSUE, AND HE TESTIFIED, "HAS  
01:08:41 17 CISCO EVER ENTERED INTO A LICENSE AGREEMENT SPECIFICALLY  
01:08:45 18 GRANTING THE RIGHTS TO ITS CLI OR ANY PORTION OF ITS CLI?"

01:08:50 19 ANSWER, "I DON'T KNOW OF ANY."

01:08:52 20 WE ASKED FOR ANY AND ALL LICENSES TO THE CLI IN DISCOVERY,  
01:08:55 21 AND THE DEC LICENSE THAT MR. CHAMBERS TALKED ABOUT WAS NOT  
01:08:58 22 PRODUCED.

01:08:59 23 I HAVEN'T FOUND ANY EVIDENCE OF IT IN THE PRODUCTION  
01:09:02 24 FILES.

01:09:03 25 SO I WOULD ASK THE COURT TO INSTRUCT THE JURY AFTER THE

01:09:06 1 LUNCH BREAK THAT TESTIMONY THAT MR. CHAMBERS'S GAVE ON HIS  
01:09:10 2 DIRECT EXAMINATION, NOT MINE, BUT ON HIS DIRECT ABOUT THE DEC  
01:09:16 3 LICENSE SHOULD BE STRICKEN AND DISREGARDED, OR WILL BE STRICKEN  
01:09:20 4 AND SHOULD BE DISREGARDED.

01:09:22 5 THE COURT: MR. NELSON, ARE YOU GOING TO PICK UP ON  
01:09:24 6 THAT SINCE YOU HANDLED THE DISCOVERY?

01:09:27 7 MR. NELSON: YEAH, I DIDN'T PERSONALLY, BUT I KNOW  
01:09:30 8 THE ISSUE.

01:09:30 9 DO YOU WANT ME TO ADDRESS THE SECOND ONE FIRST? I THINK  
01:09:33 10 THE FIRST ONE IS HE JUST DOESN'T WANT US TO GO BACK INTO THE  
01:09:36 11 PATENTS, AND THAT'S NOT REALLY WHAT THE QUESTION ELICITED.

01:09:39 12 AND MR. GIANCARLO ACTUALLY BROUGHT THAT UP IN  
01:09:42 13 CROSS-EXAMINATION.

01:09:42 14 THE COURT: SO WE ARE JUST NOT GOING DOWN THE ROAD OF  
01:09:46 15 DISCUSSING THE OTHER PATENTS THAT CISCO HAS AND ARISTA'S  
01:09:53 16 KNOWLEDGE OF THEM. THAT'S BEEN STRICKEN AS TO THE ITC, BUT I  
01:09:57 17 JUST DON'T EVEN WANT TO GET NEAR THAT, IT'S SIMPLY NOT  
01:10:00 18 RELEVANT.

01:10:01 19 MR. NELSON: NO. UNDERSTOOD, YOUR HONOR.

01:10:02 20 THE COURT: THAT'S THE WARNING, MR. VAN NEST. I  
01:10:04 21 CONCUR, YOU UNDERSTAND THAT.

01:10:06 22 MR. VAN NEST: THANK YOU, YOUR HONOR.

01:10:06 23 MR. NELSON: HE'S NOT GOING BACK THERE.

01:10:08 24 ON THE OTHER THING, MY UNDERSTANDING YOUR HONOR, IT'S NOT  
01:10:10 25 A LICENSE TO THE CLI, THERE WAS A JOINT DEVELOPMENT AGREEMENT

01:10:13 1 WITH DEC. IT'S NOT A LICENSE TO THE CLI.

01:10:16 2 AND WHERE THIS CAME UP, ACTUALLY --

01:10:20 3 THE COURT: I DON'T THINK MR. CHAMBERS ACTUALLY

01:10:22 4 TESTIFIED IT WAS A LICENSE. I DON'T RECALL THAT HE USED THAT

01:10:24 5 WORD.

01:10:25 6 MR. VAN NEST: HE CERTAINLY REFERENCED THE CLI AND

01:10:27 7 THE TESTIMONY WAS CRYSTAL CLEAR, CRYSTAL CLEAR THAT THIS GAVE

01:10:31 8 DEC PERMISSION TO USE THE CLI.

01:10:33 9 SO WHATEVER WORDS HE USED, IT WAS CALCULATED TO LEAVE THE

01:10:37 10 IMPRESSION THAT THEY HAD GIVEN SOMEBODY SPECIFIC PERMISSION TO

01:10:40 11 USE THE CLI AND WE DON'T HAVE THE LICENSE, AND THEY DENIED THAT

01:10:44 12 IN THEIR 30(B) (6).

01:10:46 13 MR. NELSON: OKAY. SO IT'S NOT A LICENSE TO THE CLI,

01:10:49 14 YOUR HONOR.

01:10:51 15 AND IF I COULD FINISH, BEFORE HE CUT ME OFF, THAT WHERE

01:10:54 16 THIS CAME UP, IS ON CROSS-EXAMINATION OF MR. LOUGHEED. YOU

01:11:00 17 WILL RECALL THEY PULLED OUT THE DEC MANUAL AND HE SAID HE

01:11:03 18 DIDN'T HAVE ANY IDEA WHAT THAT WAS BUT THAT THEY SHOWED HIM A

01:11:06 19 BUNCH OF QUESTIONS AND REPRESENTED THAT THOSE WERE COMMANDS,

01:11:10 20 SOME OF THE COMMANDS THAT OVERLAPPED, FROM A DEC PRODUCT.

01:11:13 21 THAT PRODUCT, AS PRESS RELEASES SHOW ALL OVER THE PLACE,

01:11:18 22 RUNS THE IOS; RIGHT, IT RUNS THE IOS BECAUSE IT WAS A JOINT

01:11:23 23 DEVELOPMENT PRODUCT. SO THOSE QUESTIONS HAD NO FOUNDATION,

01:11:26 24 WERE COMPLETELY IMPROPER.

01:11:28 25 AND IN FACT, IN THIS CASE, THEIR EXPERT DR. BLACK, HE HAD

01:11:31 1 ACCESS TO THAT MANUAL, NEVER ONCE SAID THESE COMMANDS PREDATED  
01:11:36 2 CISCO.

01:11:37 3 SO THAT WAS THE PROBLEM WITH THAT. IT WAS COMPLETELY  
01:11:39 4 IMPROPER QUESTIONING, IT HAD NEVER BEEN RAISED BEFORE IN THIS  
01:11:44 5 CASE.

01:11:44 6 SO THE ONLY THING MR. CHAMBERS WAS SAYING WAS THAT WAS A  
01:11:47 7 PRODUCT, NOT THAT IT WAS LICENSED UNDER THE CLI. IT'S NOT A  
01:11:50 8 DISCOVERY ISSUE. SO THAT THERE CAN BE NO FURTHER INTIMATION  
01:11:58 9 THAT SOMEHOW DEC HAD COMMANDS THAT PREDATED, THAT'S NEVER BEEN  
01:12:02 10 A CONTENTION IN THE CASE.

01:12:03 11 AND IF WE CAN JUST REMOVE THAT FROM THE CASE, IT'S ALL --  
01:12:06 12 EVERYTHING IS FINE. BUT THERE WAS NO -- IT ISN'T A LICENSE  
01:12:10 13 AGREEMENT AND THERE WAS NO INTENTION TO IMPLY THAT IT WAS A  
01:12:14 14 LICENSE AGREEMENT. AND IN FACT, I'M NOT EVEN SURE HOW THAT  
01:12:18 15 WOULD BE IN MY INTEREST TO IMPLY THAT IT'S A LICENSE AGREEMENT.

01:12:22 16 MR. VAN NEST: LET ME SAY TWO THINGS.

01:12:23 17 MR. NELSON: I'M DONE NOW, BOB.

01:12:25 18 MR. VAN NEST: TWO THINGS.

01:12:26 19 ONE, THAT'S A MISCHARACTERIZATION OF WHAT WAS DONE WITH  
01:12:30 20 MR. LOUGHEED, BECAUSE HE WAS ASKED SIMPLY WHEN HE ADOPTED  
01:12:35 21 COMMANDS AT CISCO, WAS HE AWARE THAT SOME OF THOSE SAME  
01:12:39 22 COMMANDS WERE IN A PRE-EXISTING DEC MANUAL. SO THAT'S WRONG.

01:12:43 23 BUT EVEN IF IT WERE RIGHT, THE SOLUTION TO IT ISN'T TO GET  
01:12:46 24 UP TWO DAYS LATER AND PUT INTO EVIDENCE SOMETHING THAT  
01:12:49 25 CONTRADICTS YOUR 30(B) (6), AND DISCUSSED AN AGREEMENT, AND I

01:12:55 1 DON'T CARE WHAT WE CALL IT, THAT HAS NEVER BEEN PRODUCED, WHICH

01:12:59 2 WE EXPRESSLY ASKED FOR, WHICH WE HAVE EXPRESS TESTIMONY FROM

01:13:03 3 THE 30(B)(6) WITNESS DOES NOT EXIST.

01:13:06 4 I MEAN, THAT'S NOT PROPER, EVEN IF YOU WERE RIGHT ABOUT

01:13:11 5 MR. LOUGHEED, WHICH HE'S NOT, THAT DOESN'T JUSTIFY GETTING UP

01:13:16 6 NOW AND TELLING THE JURY THAT SOME KIND OF AGREEMENT TO THE CLI

01:13:19 7 THAT DEC HAS BACK IN THE 80'S.

01:13:22 8 THAT'S WRONG AND IMPROPER AND CONTRADICTS --

01:13:25 9 THE COURT: WELL, SO HERE'S THE PROBLEM, I'M EITHER

01:13:28 10 GOING TO HAVE TO STRIKE IT OR IT'S GOING TO HAVE TO COME BACK

01:13:30 11 AND BE EXPLAINED WHAT IT IS BECAUSE IT'S LEFT A MISIMPRESSION

01:13:34 12 WITH THE JURY.

01:13:35 13 MR. VAN NEST: I THINK, YOUR HONOR, WE SHOULD STRIKE

01:13:37 14 IT.

01:13:37 15 THE COURT: IT'S MUCH EASIER TO STRIKE IT THAN GO

01:13:39 16 BACK AND EXPLAIN IT.

01:13:40 17 MR. VAN NEST: THE EXPLAINING IT DOESN'T HELP ME

01:13:42 18 BECAUSE THAT MAKES THE HARM EVEN WORSE. I DON'T HAVE THE

01:13:45 19 AGREEMENT, IT'S NEVER BEEN PRODUCED, SO I DON'T HAVE ANYTHING

01:13:47 20 TO IMPEACH WITH.

01:13:49 21 THE COURT: I'M SURPRISED THAT THIS AGREEMENT WAS NOT

01:13:51 22 PRODUCED. IT'S HARD TO BELIEVE THAT. I UNDERSTAND IT'S NOT A

01:13:55 23 LICENSE.

01:13:55 24 MR. NELSON: RIGHT.

01:13:56 25 THE COURT: IF THERE'S A PARTNERSHIP, YOU KNOW, I

01:13:59 1 DON'T KNOW, YOU READ TO ME THE REQUEST. IT'S PROBABLY  
01:14:03 2 TECHNICALLY NOT A LICENSE, AND JOINT DEVELOPMENT AGREEMENTS --  
01:14:07 3 MR. NELSON: RIGHT.  
01:14:08 4 MR. VAN NEST: NO, NO, WAIT A MINUTE, EXCUSE ME.  
01:14:10 5 LICENSES, POTENTIAL LICENSES, ASSIGNMENTS OR OTHER IP RELATED  
01:14:14 6 TRANSACTIONS, THAT'S WHAT I CALL A GOOD REQUEST.  
01:14:20 7 THE COURT: WHOEVER WROTE THAT, NICE JOB.  
01:14:27 8 MR. NELSON, I THINK WE ARE NOT GOING TO GO BACK AND  
01:14:30 9 DESCRIBE THIS. IT SOUNDS LIKE THIS SHOULDN'T HAVE BEEN  
01:14:36 10 PRODUCED. I DON'T THINK MR. VAN NEST SHOULD BE CONFRONTED WITH  
01:14:39 11 THIS TESTIMONY ON AN IMPRESSION LEFT WITH THE JURY ON SOMETHING  
01:14:44 12 THAT HE'S NEVER EVEN SEEN.  
01:14:45 13 MR. NELSON: BUT HERE'S THE ONLY ISSUE WITH RESPECT  
01:14:46 14 TO THAT, AND I UNDERSTAND DISCOVERY, THESE ARE BIG COMPANIES  
01:14:49 15 AND BILLIONS OF PAGES HAVE BEEN PRODUCED. THIS DEC ISSUE, THIS  
01:14:51 16 DEC MANUAL IS NEVER AN ISSUE. THEIR EXPERT HAD THAT, NEVER  
01:14:56 17 ONCE RAISED THAT THESE WERE PRE-EXISTING COMMANDS, NEVER ONCE  
01:15:00 18 RAISED THEY WERE PUBLISHED.  
01:15:01 19 THIS WAS NEVER AN ISSUE IN THE CASE UNTIL THE IMPROPER  
01:15:04 20 CROSS-EXAMINATION OF MR. LOUGHEED MAKING THE REPRESENTATION FOR  
01:15:09 21 WHICH THERE WAS NO FOUNDATION, FOR WHICH THERE WAS ACTUALLY  
01:15:14 22 CONTRARY, CONTRARY INFORMATION BASED UPON THE RECORD IN THE  
01:15:17 23 CASE, WHERE THEIR EXPERT HAD THIS, AND HE DID SAY THAT THERE  
01:15:21 24 WERE TWO OTHER PRE-EXISTING COMMANDS THAT HE FOUND. IF YOU  
01:15:25 25 RECALL THERE WERE 508 IN THE CASE AND TWO OF THEM WERE DROPPED,

01:15:28 1 THAT'S WHY THEY WERE DROPPED, YOUR HONOR, I DON'T THINK IT'S A  
01:15:31 2 BIG SECRET.

01:15:32 3 NEVER ONCE SAID THIS. AND THEN TO COME OUT IN  
01:15:34 4 CROSS-EXAMINATION OF MR. LOUGHEED WHEN HE SAYS I DON'T  
01:15:36 5 RECOGNIZE THIS, AND THEN TO REPRESENT IN THE QUESTIONS THAT  
01:15:40 6 THESE ARE -- THESE ARE COMMANDS THAT DEC HAD PRE-EXISTING, THAT  
01:15:44 7 WASN'T AN ISSUE IN THE CASE, YOUR HONOR. THAT'S TOTALLY  
01:15:47 8 UNFAIR.

01:15:48 9 THE COURT: SO YOU ARE TRYING TO FIX THAT RATHER THAN  
01:15:50 10 HAVING OBJECTED WHEN MR. LOUGHEED WAS CONFRONTED WITH THE  
01:15:54 11 DOCUMENT.

01:15:54 12 MR. VAN NEST: THIS IS THE FIRST I'M HEARING OF THIS.  
01:15:56 13 THE COURT: I MEAN, I'M TRUSTING MY MEMORY ON  
01:15:59 14 MR. LOUGHEED'S CROSS-EXAMINATION.

01:16:00 15 MR. NELSON: RIGHT.

01:16:00 16 SO THE REASON, YOUR HONOR, IS BECAUSE I DIDN'T KNOW, IT  
01:16:04 17 WAS NEVER AN ISSUE IN THE CASE. AND I HAD TO GO BACK AND LOOK  
01:16:07 18 BECAUSE IT MADE NO SENSE TO ME BECAUSE THEIR EXPERT HAD NEVER  
01:16:10 19 SAID THIS; RIGHT.

01:16:11 20 SO -- AND MR. LOUGHEED HAS NO FOUNDATION BECAUSE HE WASN'T  
01:16:15 21 INVOLVED IN IT WHICH HE TESTIFIED TO AND THAT'S WHY HE WAS  
01:16:18 22 PERPLEXED AT THE REPRESENTATIONS THAT THESE SOMEHOW  
01:16:22 23 PRE-EXISTED.

01:16:22 24 THAT'S THE ONLY THING. IF WE DON'T GET ANY ARGUMENT ABOUT  
01:16:25 25 THAT, THAT SOMEHOW THESE COMMANDS PRE-EXISTED, WHICH IS FALSE

01:16:30 1 UNDER THE RECORD, THEN I DON'T REALLY HAVE A PROBLEM WITH THAT.

01:16:34 2 THE COURT: YOU DON'T HAVE A PROBLEM STRIKING

01:16:36 3 MR. CHAMBERS'S TESTIMONY.

01:16:36 4 MR. NELSON: YEAH, I DON'T HAVE A PROBLEM WITH THAT,

01:16:38 5 YOUR HONOR.

01:16:39 6 I JUST DON'T THINK IT'S FAIR TO COME IN AND MISREPRESENT

01:16:42 7 QUESTIONS THAT, FOR A MANUAL THAT HAS BEEN INVOLVED IN THE

01:16:45 8 CASE, THAT THEIR EXPERT HAD AND THEIR EXPERT RELIED ON AND

01:16:48 9 NEVER ONCE TOOK THE POSITION THAT THESE COMMANDS PRE-EXISTED,

01:16:53 10 I'M SORRY I DIDN'T RAISE IT AT THE TIME, YOUR HONOR, BUT I

01:16:55 11 DIDN'T KNOW BECAUSE HOW COULD I.

01:16:58 12 THE COURT: BUT YOU ARE COMING IN TO CURE SOMETHING

01:17:02 13 FROM A FEW DAYS AGO BY INTRODUCING THE SPECTER OF THE AGREEMENT

01:17:07 14 THAT YOU HAVEN'T DISCLOSED.

01:17:08 15 MR. NELSON: WELL, IT'S JUST THE JOINT DEVELOPMENT

01:17:10 16 THE WORK, YOUR HONOR, BUT I OBVIOUSLY DIDN'T KNOW ANYTHING

01:17:12 17 ABOUT TESTIMONY CONCERNING --

01:17:13 18 THE COURT: WELL, I'M INCLINED TO STRIKE IT.

01:17:15 19 MR. VAN NEST: THANK YOU.

01:17:16 20 THE COURT: HE DIDN'T CALL IT DEC, I DON'T KNOW THE

01:17:19 21 NAME OF THE COMPANY.

01:17:19 22 MR. VAN NEST: DIGITAL EQUIPMENT CORPORATION.

01:17:20 23 HE CALLED IT DIGITAL EQUIPMENT CORPORATION. HE CALLED IT

01:17:23 24 AN AGREEMENT TO USE ALLOWING THEM TO USE CISCO'S CLI. THAT'S

01:17:29 25 WHAT HE SAID.

01:17:30 1 HE MAY NOT HAVE CALLED IT A LICENSE, BUT HE CALLED IT AN  
01:17:34 2 AGREEMENT. AND IT GAVE THEM PERMISSION.  
01:17:36 3 AND I JUST ASK TO REMIND THE COURT TO MAKE SURE IT'S CLEAR  
01:17:39 4 THAT IT'S NOT MY EXAMINATION BUT HIS EXAMINATION BY HIS LAWYER.  
01:17:43 5 THE COURT: WELL, I'M GOING TO STRIKE IT. I'M GOING  
01:17:46 6 TO DO IT AS QUICKLY AS I CAN. IT WAS A SMALL POINT. I NEVER  
01:17:49 7 LIKE TO MAKE THEM BIGGER POINTS.  
01:17:51 8 MR. NELSON: RIGHT. WELL, CAN I HAVE THE  
01:17:53 9 CROSS-EXAMINATION THEN OF MR. LOUGHEED AND THE REPRESENTATION  
01:17:56 10 STRICKEN AS WELL? BECAUSE THAT'S EXACTLY THE SAME ISSUE.  
01:18:00 11 MR. VAN NEST: I WILL BE HAPPY TO LOOK AT IT. THIS  
01:18:02 12 IS THE FIRST I'M HEARING ABOUT IT.  
01:18:04 13 THE COURT: YOU ARE GOING TO HAVE TO PULL THE  
01:18:06 14 TESTIMONY.  
01:18:07 15 MR. NELSON: WE WILL PULL THE TESTIMONY.  
01:18:08 16 THE COURT: BECAUSE THIS, I HAVE IN MY NOTES THAT  
01:18:12 17 I'VE JUST WROTE AN HOUR AGO, AND I WOULD HAVE MR. LOUGHEED, BUT  
01:18:15 18 IT WOULD TAKE ME TIME.  
01:18:16 19 MR. NELSON: NO, NO, I UNDERSTAND AND WE WILL BRING  
01:18:18 20 THAT TESTIMONY TO YOUR HONOR TOMORROW MORNING FOR THAT  
01:18:20 21 IMPLICATION. AND THAT'S ALL. SO AS LONG AS -- OKAY. I'M DONE  
01:18:26 22 NOW.  
01:18:26 23 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN.  
01:18:31 24 MR. VAN NEST: THANK YOU, YOUR HONOR.  
01:18:36 25 (JURY IN AT 1:19 P.M.)

01:19:38 1 THE COURT: GOOD AFTERNOON, EVERYONE. ALL OF OUR  
01:19:40 2 JURORS ARE BACK AND MR. CHAMBERS HAS COME BACK TO THE WITNESS  
01:19:45 3 STAND.  
01:19:46 4 MR. VAN NEST IS GOING TO CONTINUE WITH HIS  
01:19:48 5 CROSS-EXAMINATION.  
01:19:49 6 LADIES AND GENTLEMEN, THERE WAS ONE ANSWER THAT WAS,  
01:19:54 7 QUESTION AND ANSWER THAT WAS GIVEN IN MR. CHAMBERS'S DIRECT  
01:20:00 8 EXAMINATION, THAT'S WHEN MR. DESMARAIS WAS ASKING THE  
01:20:03 9 QUESTIONS, AND IT HAD TO DO WITH THE DIGITAL EQUIPMENT  
01:20:06 10 CORPORATION HAVING AN AGREEMENT WITH CISCO IN THE EARLY 1990'S.  
01:20:11 11 I AM GOING TO STRIKE THAT QUESTION AND ANSWER AND YOU ARE  
01:20:15 12 NOT TO CONSIDER IT IN ANY WAY.  
01:20:19 13 ALL RIGHT. MR. VAN NEST WOULD YOU LIKE TO CONTINUE?  
01:20:21 14 MR. VAN NEST: I WOULD, YOUR HONOR.  
01:20:22 15 THE COURT: GO AHEAD, PLEASE.  
01:20:23 16 Q. MR. CHAMBERS, GOOD AFTERNOON.  
01:20:24 17 A. GOOD AFTERNOON, MR. VAN NEST.  
01:20:25 18 Q. WOULD YOU OPEN YOUR NOTEBOOK TO TX 5423, PLEASE.  
01:20:37 19 AND DO YOU RECOGNIZE THAT AS ANOTHER ONE OF THE BRIEFINGS  
01:20:40 20 THAT YOU TYPICALLY RECEIVE BEFORE TALKING WITH CUSTOMERS?  
01:20:44 21 A. YES, I DO.  
01:20:45 22 Q. THE SAME FORMAT AS THE ONE WE LOOKED AT EARLIER?  
01:20:48 23 A. LET ME JUST LOOK FOR A SECOND. PRETTY SIMILAR, YES, SIR.  
01:20:55 24 MR. VAN NEST: OKAY. I WOULD OFFER 5423 INTO  
01:20:57 25 EVIDENCE YOUR HONOR.

01:20:58 1 THE COURT: ANY OBJECTION?

01:20:59 2 MR. DESMARAIS: NO.

01:21:00 3 THE COURT: IT WILL BE ADMITTED.

01:21:03 4 (DEFENDANT'S EXHIBIT 5423 WAS ADMITTED INTO EVIDENCE.)

01:21:03 5 BY MR. VAN NEST:

01:21:03 6 Q. MR. CHAMBERS, ADP, ALSO A BIG CUSTOMER OF CISCO; RIGHT?

01:21:08 7 A. YES, THEY ARE.

01:21:09 8 Q. AND MIKE CAPONE WAS THE CHIEF INFORMATION OFFICER THERE?

01:21:12 9 A. YES, HE IS.

01:21:14 10 Q. THIS IS ANOTHER CLIENT THAT YOU HAD OCCASION TO VISIT BACK

01:21:17 11 WHEN YOU WERE CEO?

01:21:18 12 A. THAT IS CORRECT.

01:21:19 13 Q. AND AN IMPORTANT CLIENT AT THAT; RIGHT?

01:21:21 14 A. ONE OF THE MANY IMPORTANT CLIENTS, YES.

01:21:24 15 Q. THEY WERE A CLIENT THAT WAS GOING TO THE CLOUD, AS THEY

01:21:28 16 WOULD PUT IT, ALONG WITH OTHERS; RIGHT?

01:21:29 17 A. THAT WOULD BE CORRECT.

01:21:30 18 Q. AND THIS IS A BRIEFING YOU RECEIVED LIKE THE ONE WE LOOKED

01:21:33 19 AT THIS MORNING. AND IT SHOWS YOU AND SOME OTHERS FROM CISCO

01:21:37 20 AS ATTENDEES, JOHN CHAMBERS, CEO, SOME OTHER FOLKS AS WELL FROM

01:21:44 21 ADP. THAT'S THE ATTENDEE LIST?

01:21:47 22 A. IT'S MUCH LIKE, SOMETIMES THOSE CHANGE AT THE LAST MOMENT,

01:21:50 23 BUT I HAVE NO REASON TO BELIEVE THAT WASN'T CORRECT.

01:21:53 24 Q. AND THIS IS ALSO IN THE 2011 TIME PERIOD, IF WE CAN GO TO

01:21:57 25 THE TOP, THIS SAYS JULY 14, 2011. DO YOU SEE THAT UP HERE IN

01:22:00 1 THE TOP OF THE PAGE? IF YOU PREFER TO LOOK AT IT ON THE  
01:22:03 2 SCREEN, YOU CAN, MR. CHAMBERS.

01:22:04 3 A. IT SAYS, 14, OKAY.

01:22:08 4 Q. SO IF WE COULD GO DOWN TO THE SECOND PAGE, PAGE 3,  
01:22:12 5 COMPETITIVE ISSUES, URGENT ACCOUNTS, THIS IS ON THE THIRD PAGE,  
01:22:19 6 MR. CHAMBERS. AGAIN, I'VE GOT IT ON THE SCREEN.

01:22:22 7 A. OKAY. I'VE GOT IT, SIR.

01:22:23 8 Q. ADP JUST AWARDED ARISTA ITS 10G, THAT'S 10 GIGABIT DATA  
01:22:29 9 CENTER SWITCHING EXPANSION, THAT'S WHAT THIS SAYS?

01:22:33 10 A. THAT'S CORRECT.

01:22:33 11 Q. AND DC, IN THIS CONTEXT THAT MEANS DATA CENTER, CORRECT?

01:22:36 12 A. DC, YES.

01:22:37 13 Q. 10G IS GIGABIT SPEED?

01:22:41 14 A. THAT'S CORRECT.

01:22:42 15 Q. THE REASON GIVEN FOR SELECTION IS 10G FUNCTIONALITY, ADP  
01:22:46 16 WANTED FROM CISCO, IS IN THE NEXUS 7K F2 CARD, NOT AVAILABLE  
01:22:52 17 UNTIL NOVEMBER 2011, AND CISCO WOULD NOT COMMIT TO DELIVERY  
01:22:58 18 WITH FINANCIAL PENALTIES FOR DELAY; DO YOU SEE THAT?

01:23:01 19 A. YES, I DO.

01:23:02 20 Q. THAT MEANS THAT THE PRODUCT THAT YOU WERE CLAIMING COULD  
01:23:06 21 COMPETE WITH ARISTA WOULDN'T BE READY UNTIL NOVEMBER WHICH WAS  
01:23:09 22 SEVERAL MONTHS LATER THAN THE CUSTOMER WANTED; RIGHT?

01:23:12 23 A. THAT WOULD BE ONE OF THE ELEMENTS OF THE DECISION, YES,

01:23:14 24 SIR.

01:23:14 25 Q. AND IT LOOKS LIKE, AS THE NEXT LINE SHOWS, ACTUALLY CISCO

01:23:20 1 MADE SOME OFFERS, SOME FINANCIAL OFFERS TO SWEETEN THE DEAL AND  
01:23:25 2 ATTEMPT TO HOLD OFF THEIR SELECTION OF ARISTA; RIGHT?  
01:23:28 3 A. LET ME JUST READ IT FOR A MOMENT, PLEASE.  
01:23:32 4 Q. LET'S PUT IT UP FOR THE JURORS. LET'S HIGHLIGHT THE NEXT  
01:23:36 5 SECTION AS WELL. DURING THE NEXUS VERSUS ARISTA NEGOTIATION,  
01:23:41 6 IN PLACE OF DELIVERY PENALTIES, CISCO OFFERED ADP, AN EXTENDED  
01:23:45 7 LOAN OF CURRENTLY AVAILABLE CARDS VALUED UNTIL THE F2 CARD,  
01:23:48 8 THAT'S THE NEW ONE, IS DELIVERED, SERVICES VALUED AT \$200,000  
01:23:54 9 IN LIEU OF A DELIVERY PENALTY; DO YOU SEE THAT?  
01:23:56 10 A. YES, I DO.  
01:23:57 11 Q. THAT'S REFLECTING THAT IN THE NEGOTIATIONS TO KEEP ARISTA  
01:24:02 12 OUT OF THIS ACCOUNT, CISCO MADE SOME FINANCIAL OFFERS TO MAKE  
01:24:05 13 IT MORE ATTRACTIVE FOR THE CUSTOMER; RIGHT?  
01:24:07 14 A. I WOULD IMAGINE THERE WERE MORE THAN FINANCIAL OFFERS, BUT  
01:24:09 15 THAT'S PART OF THE ELEMENT, YES.  
01:24:11 16 Q. THIS MAY BE A SUMMARY AND THERE MAY BE MORE INDEED, BUT  
01:24:15 17 THIS IS WHAT WE'VE GOT IN THE DOCUMENTS WRITTEN BY YOUR SALES  
01:24:18 18 FOLKS; RIGHT?  
01:24:18 19 A. THAT IS CORRECT.  
01:24:19 20 Q. OKAY. AND NOTWITHSTANDING ALL THOSE OFFERS AND  
01:24:22 21 NOTWITHSTANDING ALL THOSE BENEFITS, AS THIS DOCUMENT REFLECTS,  
01:24:25 22 ARISTA WAS STILL THE SELECTED VENDOR; RIGHT?  
01:24:27 23 A. YES. IF I MAY ADD, I THINK THAT BOTH IN THE MICROSOFT  
01:24:33 24 EXAMPLE AND THE ADP EXAMPLE, CISCO DID VERY WELL IN THOSE  
01:24:36 25 ACCOUNTS AS WELL.

01:24:37 1 Q. OKAY. NOW BY 2013, THE PRESS WAS ASKING YOU,

01:24:43 2 MR. CHAMBERS, WHAT IS CISCO GOING TO DO ABOUT ARISTA IN THIS

01:24:46 3 COMPETITION IN THE SDN MARKET; RIGHT?

01:24:49 4 A. THAT WOULD BE FAIR.

01:24:51 5 Q. OKAY. AND YOU WERE TELLING THE PRESS THAT YOU KNEW EVERY

01:24:56 6 ACCOUNT ARISTA WAS IN AND EXACTLY WHAT ARISTA WAS DOING; RIGHT?

01:25:01 7 A. I WOULD BE SURPRISED IF IT WERE THAT DIRECT, BUT WAS I

01:25:06 8 VERY MUCH AWARE OF ARISTA AND VERY MUCH AWARE OF THEIR MOMENTUM

01:25:13 9 IN THE MARKET AND WHAT THEY WERE FOCUSING ON, YES. I THINK

01:25:16 10 THEY HAD 4,000 ACCOUNTS, I DON'T THINK I WOULD BE AWARE OF

01:25:19 11 EVERY ACCOUNT.

01:25:19 12 Q. OKAY. WELL, LET'S TAKE A LOOK AT HOW DIRECT YOU WERE.

01:25:22 13 WOULD YOU LOOK AT TX 8193, PLEASE. IT'S IN YOUR BINDER NEAR

01:25:30 14 THE BACK. DO YOU HAVE IT?

01:25:36 15 A. YES, I DO.

01:25:37 16 Q. OKAY. THAT'S AN ARTICLE IN *BARREN'S*; RIGHT. *BARREN'S* IS

01:25:43 17 A FINANCIAL PUBLICATION, CORRECT?

01:25:45 18 A. YES, IT IS.

01:25:46 19 Q. AND *BARREN'S* IS ONE OF THE PUBLICATIONS YOU GIVE

01:25:49 20 INTERVIEWS TO FROM TIME TO TIME?

01:25:51 21 A. YES, THAT'S CORRECT.

01:25:51 22 Q. AND THIS AUTHOR TIERNAN RAY, THAT'S SOMEONE YOU KNOW?

01:25:56 23 A. I'M SORRY, WHAT WAS THE NAME AGAIN, SIR.

01:25:58 24 Q. TIERNAN RAY?

01:26:00 25 A. IF IT'S THE PERSON INTERVIEWING ME, I UNDERSTAND.

01:26:05 1 Q. OKAY. AND DO YOU RECOGNIZE THIS PICTURE OF YOU IN THE  
01:26:10 2 ARTICLE REGARDING AN INTERVIEW WITH YOU BACK IN SEPTEMBER OF  
01:26:13 3 2013?  
01:26:16 4 A. I HAVE NO REASON TO DOUBT THAT THAT'S THE TIMEFRAME.  
01:26:22 5 MR. VAN NEST: FAIR ENOUGH. I WILL OFFER 8193 IN  
01:26:24 6 EVIDENCE YOUR HONOR.  
01:26:24 7 THE COURT: ANY OBJECTION?  
01:26:26 8 MR. DESMARAIS: NO, YOUR HONOR.  
01:26:27 9 THE COURT: IT WILL BE ADMITTED.  
01:26:29 10 (DEFENDANT'S EXHIBIT 8193 WAS ADMITTED INTO EVIDENCE.)  
01:26:29 11 BY MR. VAN NEST:  
01:26:31 12 Q. THIS IS AN INTERVIEW WITH YOU, THERE'S A HANDSOME PICTURE  
01:26:33 13 ON THE FRONT PAGE, MR. CHAMBERS, THAT'S YOU?  
01:26:36 14 A. THANK YOU FOR THE COMPLIMENT, IT MIGHT BE THE LAST ONE I  
01:26:39 15 GET.  
01:26:40 16 Q. YOU ARE MAKING A VISIT THERE AT A CONFERENCE; RIGHT?  
01:26:42 17 A. UH-HUH.  
01:26:43 18 Q. OKAY. AND THEN ON THE SECOND PAGE, THERE'S A QUOTE FROM  
01:26:46 19 AN INTERVIEW THAT YOU GAVE. IF WE COULD HIGHLIGHT THAT AT THE  
01:26:49 20 MIDDLE.  
01:26:52 21 ACTUALLY, LET'S START WITH THE QUESTION RIGHT ABOVE THAT.  
01:26:56 22 IF WE COULD. THE QUESTION IS ABOUT ARISTA.  
01:27:01 23 "WHEN I POSE TO CHAMBERS THAT ARISTA NETWORKS, THE SANTA  
01:27:06 24 CLARA, CALIFORNIA STARTUP THAT IS STORMING THE DATA CENTER WITH  
01:27:08 25 VERY SUCCESSFUL PRODUCTS, IS THE MOST SERIOUS COMPETITOR THE

01:27:14 1 COMPANY HAS, HE REPLIES, NOT EVEN CLOSE."

01:27:17 2 DO YOU SEE THAT?

01:27:17 3 A. YES, I DO.

01:27:18 4 Q. DOES THAT SOUND LIKE SOMETHING YOU WOULD SAY?

01:27:20 5 A. AT VARIOUS POINTS IN TIME, DEPENDING ON THE FACTS AT THE

01:27:25 6 TIME. THAT WAS MY VIEW AT THE TIME, CORRECT.

01:27:26 7 Q. OKAY. NOW LET'S GO TO THE ANSWER. AND YOU ARE TALKING

01:27:30 8 HERE ABOUT ARISTA. AND YOU SAY, "THERE HAS ALWAYS BEEN

01:27:35 9 SOMEBODY WHO IS GOING TO BE OUR TOUGHEST COMPETITOR." IT LISTS

01:27:39 10 SOME, "THEY WERE TOUGH 15, 20 YEARS AGO. ARISTA WILL BE ONE

01:27:42 11 AREA OF THE MARKET, THE DATA CENTER. THEY USE MERCHANT

01:27:46 12 SILICON. I KNOW EVERY ACCOUNT THEY'RE IN, I KNOW EXACTLY WHAT

01:27:49 13 THEY'RE DOING."

01:27:52 14 ISN'T THAT WHAT YOU TOLD MR. RAY IN THE FALL OF 2013?

01:27:54 15 A. IT'S A QUOTE THAT I HAVEN'T SEEN, BUT I'M NOT GOING TO

01:27:58 16 DISPUTE IT.

01:27:58 17 Q. OKAY. AND WHAT YOU WERE TELLING PEOPLE IN 2013 ABOUT WHAT

01:28:03 18 YOU WOULD DO RELATED TO A COMPANY CALLED INSIEME; RIGHT?

01:28:10 19 A. SO THIS IS THE FALL OF 2013?

01:28:13 20 Q. THAT'S RIGHT, SIR.

01:28:14 21 A. THAT'S CORRECT.

01:28:15 22 Q. OKAY. AND IN ORDER TO ADDRESS THIS TRANSITION WE TALKED

01:28:18 23 ABOUT THIS MORNING, THE TRANSITION TO THE SOFTWARE DEFINED

01:28:22 24 NETWORKING MARKET, YOU FUNDED AND LATER ACQUIRED A COMPANY

01:28:27 25 CALLED INSIEME; RIGHT? YOU CISCO?

01:28:32 1 A. IT'S ONE OF THE THINGS, YES, WE DID.

01:28:34 2 Q. OKAY. INSIEME WAS A COMPANY OUTSIDE CISCO THAT YOU FUNDED

01:28:37 3 INITIALLY TO DEVELOP AND ACCELERATE THE DEVELOPMENT OF SOFTWARE

01:28:45 4 DEFINED NETWORKING EQUIPMENT; RIGHT?

01:28:47 5 A. IT WAS A LITTLE BIT MORE THAN THAT. WE TOOK CISCO

01:28:50 6 EMPLOYEES, MOVED THEM OUTSIDE THE COMPANY, RECRUITED FROM

01:28:53 7 OUTSIDE THE COMPANY, AGREED UPON A PREDEFINED SET OF

01:28:55 8 OBJECTIVES, AND IF THEY MET THOSE THEN WE SPUN THEM BACK INTO

01:29:00 9 THE COMPANY, YES.

01:29:00 10 Q. AND BY THE WAY, ARE YOU AWARE THAT ONE OF THE COMPANIES

01:29:03 11 YOU WERE RECRUITING FROM FOR INSIEME WAS ARISTA ITSELF?

01:29:06 12 A. IF I REMEMBER RIGHT, I THINK WE RECRUITED FROM ALMOST

01:29:10 13 EVERY MAJOR STARTUP IN THE VALLEY. THEY DID A GOOD JOB OF

01:29:14 14 RECRUITING. ARISTA WAS PROBABLY ONE THAT THEY RECRUITED.

01:29:17 15 Q. OKAY. SO THEY RECRUITED FROM ARISTA, AND THERE'S NOTHING

01:29:20 16 WRONG WITH THAT?

01:29:21 17 A. THAT'S CORRECT. PEOPLE WOULD MIGRATE BACK AND FORTH.

01:29:24 18 Q. BACK AND FORTH. OKAY.

01:29:24 19 NOW AFTER YOU FUNDED THEM AND AFTER THEY GOT THEIR PRODUCT

01:29:27 20 UNDER WAY, THEN YOU ACTUALLY ACQUIRED THEM, CISCO DID?

01:29:30 21 A. WE HAD A PREDETERMINED ACQUISITION BASED ON THE SUCCESS OF

01:29:34 22 THE PRODUCT, THAT WAS CORRECT.

01:29:35 23 Q. AND ALL OF THIS COST, AND BY "ALL THIS" I MEAN FUNDING

01:29:38 24 THEM, GETTING THEM UP AND RUNNING, OPERATING THEM AND THEN

01:29:41 25 ACQUIRING THEM, THAT ALL COST ABOUT A BILLION DOLLARS?

01:29:45 1 A. THAT IS CORRECT.

01:29:45 2 Q. AND ONE OF THE PRODUCTS THEY CAME UP WITH WAS THE NEXUS

01:29:50 3 9000 THAT YOU MENTIONED THIS MORNING IN YOUR TESTIMONY?

01:29:53 4 A. THAT IS CORRECT.

01:29:53 5 Q. OKAY. SO THAT PRODUCT WAS DEVELOPED OUTSIDE CISCO AND IN

01:29:57 6 INSIEME AND THEN ACQUIRED BY CISCO TO COMPETE WITH ARISTA AND

01:30:02 7 OTHERS; RIGHT?

01:30:02 8 A. I THINK THAT WOULD BE SIMPLIFYING IT A LITTLE BIT.

01:30:06 9 INSIEME WAS A CISCO -- WE IMPROVED PART OF IT FROM THE VERY

01:30:13 10 BEGINNING, WE WOULD CONTROL WHAT THE PRODUCT WOULD BE AND IT

01:30:14 11 WAS RUN BY KEN, BUT THE OVERALL CONCEPT IS RIGHT.

01:30:15 12 Q. OKAY. AND THE OVERALL CONCEPT WAS YOU WANTED A COMPANY

01:30:19 13 WITH A FASTER CULTURE OF INNOVATION TO DEVELOP THIS BECAUSE YOU

01:30:25 14 WERE BEHIND IN THE SOFTWARE DEVELOPING NETWORKING MARKET;

01:30:30 15 RIGHT?

01:30:30 16 A. WE HAD USED THIS APPROACH THREE DIFFERENT TIMES. WE OFTEN

01:30:34 17 DO IT WHEN WE WANT TO ATTRACT TALENT FROM THE OUTSIDE, AND PART

01:30:37 18 OF THE REASON WAS WHERE WE WERE IN THE MARKET, CORRECT.

01:30:40 19 Q. AND YOU SAID THIS MORNING THERE ARE 15,000 CISCO EMPLOYEES

01:30:43 20 IN THE VALLEY. AREN'T THERE SOMETHING LIKE 55,000 EMPLOYEES

01:30:47 21 WORLDWIDE?

01:30:48 22 A. ABOUT 74,000.

01:30:50 23 Q. 74,000. AND AMONG THAT 74,000 ENGINEERS, YOU STILL FELT

01:30:58 24 YOU COULD DO BETTER AND FASTER OUTSIDE CISCO, AND THAT'S WHY

01:31:06 25 YOU SET UP INSIEME; RIGHT?

01:31:06 1 A. I THINK THAT WOULD BE TOO SIMPLISTIC AN ANSWER.

01:31:10 2 WHEN YOU MOVE INTO A NEW AREA, YOU CAN DO CERTAIN THINGS

01:31:13 3 WITH YOUR EXISTING EMPLOYEES, THEN YOU'VE GOT TO BRING IN

01:31:17 4 EXPERTISE FROM OTHER SIDES, AND YOU'VE GOT TO MOVE WITH

01:31:17 5 TREMENDOUS SPEED, AND YOU'VE GOT TO BE ABLE TO COMPETE WITH

01:31:21 6 STARTUPS. AS I SAID, WE'VE DONE WITH THREE TIMES BEFORE AND

01:31:24 7 IT'S BEEN VERY SUCCESSFUL IN THIS CASE.

01:31:25 8 Q. AND NOW AS A MATTER OF FACT, YOU WERE TELLING THE PRESS

01:31:28 9 WITH RESPECT TO ARISTA AND INSIEME, WATCH OUT, INSIEME HAS GOT

01:31:35 10 AN ARISTA KILLER; RIGHT?

01:31:37 11 A. I WAS BEING VERY DIRECT WITH THE PRESS. I THOUGHT WE HAD

01:31:40 12 A GREAT PRODUCT THAT, AS IT CAME INTO MARKET, THAT WE WOULD BE

01:31:44 13 VERY SUCCESSFUL, WHICH WE HAVE BEEN. THAT OUR GROWTH RATE

01:31:47 14 SINCE THAT PRODUCT WAS LAUNCHED IS UP TO \$2.4 BILLION, WHERE

01:31:52 15 INSIEME IS 1 BILLION. AND I THINK WE HAVE BEEN VERY --

01:31:56 16 Q. EXCUSE ME, MR. CHAMBERS, WHAT I ASKED YOU WAS, DID YOU

01:31:59 17 TELL THE PRESS THAT INSIEME WAS AN ARISTA KILLER?

01:32:02 18 A. I WAS BE SURPRISED IF I USED THOSE WORDS. I SAID WE WERE

01:32:06 19 GOING TO BE VERY COMPETITIVE, WHICH WE WERE AND WHICH WE ARE.

01:32:11 20 Q. CAN YOU OPEN UP YOUR BINDER TO 5227, PLEASE, MR. CHAMBERS.

01:32:15 21 A. SURE, GIVE ME A SECOND.

01:32:16 22 Q. SURE. DO YOU HAVE IT?

01:32:25 23 A. YES, I DO.

01:32:26 24 Q. THAT'S ANOTHER ARTICLE BY BARREN'S?

01:32:29 25 A. LET ME JUST HAVE A SECOND. YES.

01:32:32 1 Q. AND THAT'S TIERNAN RAY, THE SAME GENTLEMAN WE TALKED ABOUT  
01:32:36 2 EARLIER?  
01:32:36 3 A. UH-HUH.  
01:32:37 4 Q. AND DO YOU HAVE ANY REASON TO DOUBT THAT THIS REFLECTS AN  
01:32:41 5 INTERVIEW YOU GAVE TO MR. ROY IN OCTOBER OF 2013?  
01:32:44 6 A. IT'S PROBABLY A SUMMARY OF THE INTERVIEW. OBVIOUSLY THE  
01:32:48 7 MEDIA PUTS ITS OWN POSITION ON IT.  
01:32:50 8 MR. VAN NEST: OKAY. I WILL MOVE 5227 INTO EVIDENCE.  
01:32:54 9 MR. DESMARAIS: NO OBJECTION.  
01:32:55 10 THE COURT: IT WILL BE ADMITTED.  
01:32:57 11 (DEFENDANT'S EXHIBIT 5227 WAS ADMITTED INTO EVIDENCE.)  
01:32:57 12 BY MR. VAN NEST:  
01:32:57 13 Q. AND COULD WE GO TO PAGE 2. AND JUST UNDER THE CHART,  
01:33:03 14 COULD WE HIGHLIGHT THE SECTION THERE DISCUSSING -- ALL RIGHT.  
01:33:08 15 NOW THIS AGAIN IS BANNER, SO YOU KNOW THIS IS FOR PUBLICATION;  
01:33:11 16 RIGHT?  
01:33:11 17 A. THAT IS CORRECT.  
01:33:12 18 Q. OKAY. CISCO CEO, JOHN CHAMBERS, ACKNOWLEDGES THE THREAT  
01:33:19 19 FROM CLOUD PROVIDERS USING WHITE BOX SWITCH GEAR. AS FOR  
01:33:24 20 ARISTA, HE TOLD BARREN'S THAT HIS COMPANY HAS FACED 100  
01:33:28 21 STARTUPS LIKE ARISTA OVER THE YEARS, AND ALWAYS COME OUT ON  
01:33:32 22 TOP. JUST WAIT, HE SAYS, TILL CISCO NEXT MONTH TAKES THE WRAPS  
01:33:37 23 OFF ITS ARISTA KILLER, THE STARTUP CALLED INSIEME, WHICH CISCO  
01:33:41 24 FUNDED.  
01:33:42 25 ISN'T THAT WHAT YOU TOLD MR. ROY?

01:33:44 1 A. TWO THOUGHTS. FIRST OF ALL, IT WASN'T ARISTA, I DID THE  
01:33:48 2 SAME THING EARLIER, I GET CISCO AND ARISTA CONFUSED. I THINK  
01:33:51 3 YOU JUST SAID ARISTA TWICE ON THAT.

01:33:54 4 Q. PERHAPS?

01:33:54 5 A. BUT STILL, CISCO'S NEXT MONTHS TAKES THE WRAPS OFF.

01:33:59 6 SO YEAH, WE GOT A PRODUCT COMING OUT, IT'S GOING TO BE TOO  
01:34:03 7 GOOD, AND I FULLY EXPECTED TO GAIN MARKET SHARE.

01:34:05 8 THIS IS NOT A DIRECT QUOTE. YOU CAN SEE THAT ON THAT. I  
01:34:08 9 THINK MY PEER, JAYSHREE, GOT QUOTED IN THE PARAGRAPH BEFORE  
01:34:10 10 THAT WHICH INDICATES THAT HERS WAS A DIRECT QUOTE, MINE WAS  
01:34:14 11 PROBABLY NOT.

01:34:15 12 AND I DO BELIEVE WE ARE GOING TO WIN THAT BATTLE AND I  
01:34:18 13 THINK WE HAVE. I STILL FIND IT UNLIKELY I WOULD HAVE USED THE  
01:34:21 14 WORD "KILLER," BUT IT'S IRRELEVANT.

01:34:23 15 Q. YOU THINK YOU'VE WON THE BATTLE WITH ARISTA IN THE  
01:34:25 16 SOFTWARE DEFINED NETWORKING MARKET, MR. CHAMBERS?

01:34:27 17 A. I THINK WE BROUGHT OUT A PRODUCT THAT IS GOING TO GET OUR  
01:34:30 18 LEADERSHIP IN THE SOFTWARE DEFINED NETTING AND THE GROWTH DID  
01:34:35 19 OCCUR.

01:34:35 20 Q. OKAY. BUT CLEARLY YOU WERE TELLING THE PRESS THAT INSIEME  
01:34:39 21 WAS ONE OF THE ANSWERS YOUR COMPANY HAD TO ARISTA'S SUCCESS IN  
01:34:42 22 THE MARKET; RIGHT?

01:34:43 23 A. THAT'S FAIR.

01:34:44 24 Q. NO DOUBT ABOUT THAT?

01:34:46 25 A. BUT AGAIN REMEMBER --

01:34:47 1 Q. NO DOUBT ABOUT THAT, MR. CHAMBERS?

01:34:50 2 A. IT'S VMWARE, IT IS ALSO WHITE BOX, IT IS ALSO ARISTA.

01:34:55 3 Q. OKAY. NOW AS I THINK WE'VE SEEN, YOU ARE OFTEN CALLED TO

01:34:59 4 SPEAK ON BEHALF OF CISCO PUBLICLY?

01:35:01 5 A. THAT IS CORRECT.

01:35:02 6 Q. AND YOU DID THAT A LOT AT CEO?

01:35:04 7 A. YES.

01:35:05 8 Q. SPOKE TO THE PRESS FROM TIME TO TIME?

01:35:08 9 A. UH-HUH.

01:35:09 10 Q. SPOKE AT CONFERENCES?

01:35:10 11 A. CORRECT.

01:35:11 12 Q. ATTENDED LARGE FUNCTIONS, AND YOU WERE THE REPRESENTATIVE

01:35:13 13 FOR CISCO?

01:35:14 14 A. YES.

01:35:15 15 Q. RIGHT. AND YOU'VE SAID MANY TIMES THAT CISCO IS AN OPEN

01:35:19 16 STANDARD COMPANY, PERIOD; RIGHT?

01:35:24 17 A. I DON'T KNOW IF I WOULD SAY OPEN STANDARD PERIOD, BUT WE

01:35:27 18 ARE AN OPEN STANDARD COMPANY, YES.

01:35:29 19 Q. AND IN FACT, YOU SAID HAVE THAT, WE ARE AN OPEN STANDARD

01:35:32 20 COMPANY; RIGHT?

01:35:32 21 A. CORRECT.

01:35:33 22 Q. AND THAT CISCO BELIEVES IN OPEN STANDARDS?

01:35:36 23 A. YES, WE DO.

01:35:37 24 Q. AND THAT CISCO PROMOTES OPEN STANDARDS?

01:35:40 25 A. YES.

01:35:41 1 Q. RIGHT?

01:35:41 2 A. YES.

01:35:42 3 Q. YOU SAID THAT TOO. AND THAT OPEN STANDARDS IS A GOOD WAY

01:35:46 4 TO DO BUSINESS, YOU SAID THAT AS WELL?

01:35:48 5 A. PROBABLY.

01:35:49 6 Q. GOOD FOR EVERYBODY?

01:35:51 7 A. I DON'T KNOW IF I EVER SAID THAT, BUT YES.

01:35:55 8 Q. ALL RIGHT. AND IN FACT NETWORKING IN PARTICULAR IS FULL

01:35:59 9 OF INDUSTRY STANDARDS; RIGHT?

01:36:03 10 A. FULL OF INDUSTRY STANDARDS, BUT ALSO PROPRIETARY

01:36:06 11 CAPABILITIES, YES.

01:36:07 12 Q. INDUSTRY STANDARD PROTOCOLS THAT COMPANIES FOLLOW SO THEIR

01:36:11 13 SWITCHES CAN INTEROPERATE; RIGHT?

01:36:13 14 A. THERE ARE SOME THINGS THAT ARE OPEN STANDARDS, THERE ARE

01:36:19 15 SOME THINGS THAT ARE GOLD STANDARDS, AND THERE ARE SOME THINGS

01:36:22 16 THAT ARE PROPRIETARY APPROACHES.

01:36:23 17 Q. AND YOU KNOW THAT CISCO, THROUGHOUT THE PERIOD OF TIME

01:36:26 18 WE'RE TALKING ABOUT, PROMOTED ITS CLI AS AN INDUSTRY STANDARD;

01:36:32 19 RIGHT?

01:36:32 20 A. I WOULD NOT AGREE WITH THAT.

01:36:33 21 Q. WOULD YOU TAKE A LOOK IN YOUR BINDER AT EXHIBIT 5299, IT'S

01:36:40 22 ALREADY IN EVIDENCE SO WE WILL PUT IT ON THE SCREEN.

01:36:50 23 DO YOU RECOGNIZE THIS, MR. CHAMBERS, AS A DATA SHEET FOR

01:36:56 24 THE NEXUS 7000 SERIES? YOU TESTIFIED ABOUT NEXUS 7000 IN YOUR

01:37:01 25 DIRECT EXAMINATION.

01:37:07 1 A. OKAY. I'M GOING TO WHERE THAT IS AGAIN.

01:37:09 2 Q. IT'S 52 -- I'M SORRY, 5229. WAIT A MINUTE, WAIT A MINUTE.

01:37:15 3 I'VE GOT IT TWICE HERE. IT'S 5299. THERE IT IS. I'M SORRY,

01:37:20 4 MR. CHAMBERS. I GOOFED YOU UP. 5299.

01:37:24 5 A. I DO THAT MYSELF. OKAY. 5299.

01:37:27 6 Q. OKAY. THIS IS A --

01:37:30 7 A. SECOND PAGE --

01:37:31 8 Q. FIRST PAGE, I BELIEVE. DATA SHEET FOR THE NEXUS 7000,

01:37:37 9 THAT'S THE ONE YOU SAID MS. ULLAL WAS RESPONSIBLE FOR WHEN SHE

01:37:41 10 WAS BACK AT CISCO WORKING FOR YOU?

01:37:43 11 A. THAT'S CORRECT, 7000. YES.

01:37:46 12 Q. THAT'S THE SAME PRODUCT YOU WERE TALKING ABOUT THIS

01:37:48 13 MORNING?

01:37:48 14 A. THAT IS CORRECT.

01:37:48 15 Q. ONE OF YOUR INVENTIVE PRODUCTS IN YOUR INNOVATION STORY?

01:37:52 16 A. THAT IS CORRECT.

01:37:54 17 Q. NOW AT THE BOTTOM THERE OF THE PAGE, BY THE WAY, THESE ARE

01:37:58 18 PUBLIC; RIGHT, THEY GO OUT TO THE PUBLIC, THESE DATA SHEETS?

01:38:01 19 A. I WOULD THINK SO, YES.

01:38:03 20 Q. YEAH. OKAY. YOU SAID IN CONNECTION WITH THIS PRODUCT, IT

01:38:07 21 HAS A COMMAND-LINE INTERFACE SIMILAR TO THAT OF CISCO IOS

01:38:11 22 SOFTWARE. USES THE INDUSTRY STANDARD CISCO IOS CLI TO MINIMIZE

01:38:17 23 THE AMOUNT OF TIME NEEDED FOR OPERATORS TO LEARN THE SYSTEM AND

01:38:21 24 BECOME OPERATIONALLY PROFICIENT.

01:38:24 25 THAT'S WHAT IT SAYS; RIGHT?

01:38:25 1 A. THAT IS CORRECT.

01:38:26 2 Q. AND THAT'S THE CISCO PUBLICATION?

01:38:27 3 A. THAT'S CORRECT.

01:38:28 4 Q. RIGHT? AND WHEN IT TALKS ABOUT THE AMOUNT OF TIME NEEDED,

01:38:32 5 IT'S REFERRING TO THE FACT THAT CUSTOMERS ALL SPEND MONEY

01:38:37 6 LEARNING THE IOS CLI AND THEY CAN USE THAT TRAINING ON YOUR NEW

01:38:43 7 PRODUCT, THAT'S WHAT YOU'RE REFERRING TO THERE; RIGHT?

01:38:45 8 A. I DON'T KNOW IF I DRAW THAT CORRELATION, BUT I HAVE NO

01:38:50 9 REASON TO SAY IT ONE WAY OR THE OTHER. IT SAYS WHAT IT SAYS.

01:38:55 10 Q. OKAY. LET'S TAKE A LOOK AT ANOTHER ONE, IT'S TX 5454 IN

01:38:59 11 YOUR BINDER. AND THAT IS A DATA SHEET FOR CISCO NX-OS

01:39:12 12 NETWORKING SOFTWARE. DO YOU HAVE THAT MR. CHAMBERS?

01:39:14 13 A. YES, SIR, I DO.

01:39:15 14 Q. THAT APPEARS TO BE A CISCO PUBLICATION?

01:39:18 15 A. YES, IT DOES.

01:39:20 16 Q. AND DOWN THERE, YOUR EYES HOPEFULLY ARE BETTER THAN MINE,

01:39:23 17 BUT IT LOOKS LIKE 2012?

01:39:24 18 A. THEY ARE STILL HANGING IN THERE. GIVE ME JUST A SECOND.

01:39:31 19 YES, 2012.

01:39:32 20 MR. VAN NEST: OKAY. I MOVE 5454 INTO EVIDENCE,

01:39:34 21 YOUR HONOR.

01:39:35 22 THE COURT: ANY OBJECTION?

01:39:36 23 MR. DESMARAIS: NO, YOUR HONOR.

01:39:37 24 THE COURT: OKAY. IT WILL BE ADMITTED.

01:39:38 25 (DEFENDANT'S EXHIBIT 5454 WAS ADMITTED INTO EVIDENCE.)

01:39:38 1 BY MR. VAN NEST:

01:39:39 2 Q. OKAY. LET'S TAKE A LOOK AT THIS. THIS IS ANOTHER DATA

01:39:41 3 SHEET THAT CISCO PUBLISHED IN 2012; RIGHT?

01:39:46 4 A. THAT IS CORRECT.

01:39:47 5 Q. AND THE NX-OS NETWORKING SOFTWARE, THAT'S THE SOFTWARE

01:39:50 6 THAT RUNS INSIDE THE NEXUS PRODUCTS YOU TALKED ABOUT THIS

01:39:54 7 MORNING, CORRECT?

01:39:55 8 A. YES, IT IS, IT'S ONE OF THEM.

01:39:57 9 Q. OKAY. AND COULD WE HIGHLIGHT THERE THE SECOND MIDDLE

01:40:00 10 COLUMN DOWN NEAR THE BOTTOM.

01:40:03 11 THIS ONE SAYS, "FURTHERMORE, CISCO NX-OS OFFERS THE SAME

01:40:08 12 INDUSTRY STANDARD COMMAND LINE ENVIRONMENT THAT WAS PIONEERED

01:40:12 13 IN CISCO IOS SOFTWARE MAKING THE TRANSITION FROM CISCO IOS

01:40:17 14 SOFTWARE TO CISCO NX-OS SOFTWARE EASY."

01:40:20 15 THAT'S WHAT IT SAYS, CORRECT?

01:40:21 16 A. THAT'S WHAT IT SAYS.

01:40:22 17 Q. AND IT USES THAT SAME PHRASE WE SAW BEFORE, INDUSTRY

01:40:27 18 STANDARD COMMAND LINE ENVIRONMENT; RIGHT?

01:40:28 19 A. YES, IT DOES.

01:40:29 20 Q. AND THERE ARE DOZENS AND DOZENS OF THESE DATA SHEETS THAT

01:40:33 21 SAY THAT VERY SAME THING, MR. CHAMBERS, AREN'T THERE?

01:40:36 22 A. I HAVE NO REASON TO DOUBT THAT YOU SAY.

01:40:39 23 Q. AND THE REASON FOR THAT IS THAT CISCO WAS PROMOTING ITS

01:40:45 24 CLI AS INDUSTRY STANDARD SO THAT CUSTOMERS WOULD FEEL

01:40:50 25 COMFORTABLE BUYING CISCO PRODUCTS AND GETTING TRAINED SO THEY

01:40:56 1 COULD USE THAT TRAINING TO BUY ANY SWITCH IN THE MARKET; RIGHT?

01:41:01 2 A. NO, WRONG.

01:41:03 3 Q. OKAY. LET ME -- LET ME MOVE ON: YOU WILL HAVE A CHANCE

01:41:08 4 WITH MR. DESMARAIS HERE.

01:41:12 5 NOW ISN'T IT THE CASE, MR. CHAMBERS, THAT BY 2010 WHEN

01:41:17 6 THAT *NETWORK WORLD* ARTICLE CAME OUT, EVERYBODY IN THE

01:41:20 7 NETWORKING INDUSTRY WAS AWARE THAT MANY VENDORS USED A CLI THAT

01:41:27 8 RESEMBLED CISCO'S? WASN'T THAT KNOWN WIDELY?

01:41:31 9 A. I WOULD HAVE NO IDEA ON THAT.

01:41:33 10 Q. LET'S TAKE A LOOK AT EXHIBIT 5416, THAT'S THE *NETWORK*

01:41:36 11 *WORLD* ARTICLE WE LOOKED AT THIS MORNING. THANKSGIVING THE ONE

01:41:45 12 THAT ANNOUNCED THE RESULTS OF THE TEST BETWEEN CISCO, ARISTA

01:41:48 13 AND OTHERS.

01:41:49 14 AND I WILL ASK MR. DAHM TO GOES DOWN SIX PAGES IN

01:41:57 15 MANAGEMENT AND USABILITY. MR. CHAMBERS, IT'S IN THERE BUT YOU

01:42:03 16 WILL SEE IT ON THE SCREEN MORE QUICKLY.

01:42:06 17 A. ALL RIGHT. JUST GIVE ME A SECOND. YOU SAID ABOUT SIX

01:42:12 18 PAGES IN?

01:42:12 19 Q. IT'S RIGHT UNDER THE TITLE. IT SAYS "MANAGEMENT AND

01:42:16 20 USABILITY?"

01:42:17 21 A. I'VE GOT IT.

01:42:18 22 Q. OKAY. LET'S BLOW UP THAT FIRST SENTENCE.

01:42:21 23 NOW AGAIN, THIS WAS A PUBLICATION THAT FOLKS IN THE

01:42:26 24 NETWORKING INDUSTRY READ; RIGHT, MR. CHAMBERS?

01:42:29 25 A. THAT IS CORRECT.

01:42:29 1 Q. ARE YOU WITH ME?

01:42:30 2 A. YES.

01:42:32 3 Q. AND WIDELY CIRCULATED WITHIN NETWORKING?

01:42:34 4 A. UH-HUH.

01:42:34 5 Q. SOMETHING YOU RESPECTED BECAUSE YOU GAVE INTERVIEWS?

01:42:38 6 A. CORRECT.

01:42:39 7 Q. OKAY. AND FROM TIME TO TIME YOU READ IT TOO?

01:42:42 8 A. CORRECT.

01:42:43 9 Q. SO THIS SAYS, "FOR MOST SWITCHES TESTED," THIS IS THE SAME

01:42:46 10 TEST WE TALKED ABOUT THIS MORNING, "THE MAIN QUESTION WHEN IT

01:42:50 11 COMES TO USABILITY IS, CAN YOU SPEAK IOS?"

01:42:54 12 THAT'S ACTUALLY IN QUOTES, DO YOU SEE THAT?

01:42:57 13 A. I SEE THAT, YES.

01:42:58 14 Q. OKAY. EVERY SWITCH TESTED, EXCEPT EXTREMES, HAS A

01:43:03 15 COMMAND-LINE INTERFACE THAT RESEMBLES CISCO?

01:43:10 16 A. THAT'S WHAT THEY ARE REPORTING.

01:43:13 17 Q. AND THEY REPORTED THAT EVERY SINGLE SWITCH THEY TESTED,

01:43:16 18 WITH ONE EXCEPTION, HAD A COMMAND-LINE INTERFACE THAT RESEMBLED

01:43:20 19 CISCO; THAT'S WHAT THIS IS REPORTING, RIGHT?

01:43:22 20 A. THAT'S WHAT THIS SAYS.

01:43:23 21 Q. AND THEY GO ON TO SAY, "THAT'S A SMART DESIGN CHOICE,

01:43:26 22 CONSIDERING MORE NETWORK ENGINEERS ARE CONVERSANT IN IOS THAN

01:43:30 23 ANY OTHER ENVIRONMENT."

01:43:31 24 THAT'S WHAT THEY CONCLUDED; THAT'S THEIR CONCLUSION,

01:43:33 25 RIGHT?

01:43:34 1 A. THAT'S THEIR CONCLUSION, YES.

01:43:37 2 Q. NOW THIS PUBLICATION WAS AVAILABLE TO EVERYBODY, INCLUDING

01:43:40 3 ALL THE FOLKS THAT CISCO THAT WERE INVOLVED IN THE COMPETITION

01:43:43 4 WITH ARISTA; RIGHT?

01:43:44 5 A. THAT IS TRUE.

01:43:47 6 Q. YOU HAVE A COMPETITIVE ANALYSIS DEPARTMENT AT CISCO OR

01:43:53 7 MAYBE MANY OF THEM?

01:43:53 8 A. I THINK IT'S MORE THE ENGINEERS DO THEIR OWN COMPETITIVE

01:43:57 9 ANALYSIS, THERE'S OVERRIDING MARKETING GROUPS, SO IT'S

01:44:00 10 THROUGHOUT THE ORGANIZATION.

01:44:01 11 Q. YOU ARE CERTAIN, AREN'T YOU, THAT THEY WERE LOOKING

01:44:04 12 CLOSELY AT ARISTA AND TESTING THE ARISTA PRODUCTS TOO?

01:44:06 13 A. FOR THE GROUPS THAT WERE FOCUSED ON SOFTWARE DEFINED

01:44:09 14 NETWORKING IN THIS GROUP OF PRODUCTS, YES.

01:44:10 15 Q. AND ANYBODY AT CISCO THAT WAS CONDUCTING THAT TESTING,

01:44:13 16 THEY WOULD KNOW EXACTLY WHAT COMMAND-LINE INTERFACE ARISTA WAS

01:44:15 17 USING, WOULDN'T THEY?

01:44:19 18 A. THEY WOULD KNOW THAT THEY USED A COMMAND-LINE INTERFACE,

01:44:23 19 THAT IS ONE OF TWO STANDARDS IN THE INDUSTRY. WOULD THEY KNOW,

01:44:27 20 AND IN MY OPINION, DID ANYONE KNOW THAT WHAT THEY WERE USING

01:44:31 21 WAS CISCO'S PROPRIETARY COMMAND-LINE INTERFACE, WITH OUR

01:44:36 22 COMMANDS, WITH OUR BROCHURES, WITH OUR HIERARCHIES, ET CETERA,

01:44:43 23 AND HELP SCREENS. SO NOW, I WOULD NOT SAY THEY WERE USING

01:44:46 24 CISCO'S.

01:44:46 25 Q. BUT YOUR CLI AND ARISTA'S CLI AND EVERYBODY'S CLI, THOSE

01:44:51 1 ARE PUBLICLY AVAILABLE, YOU CAN GO ON A WEBSITE AND LOOK AT  
01:44:58 2 ANYONE'S COMMANDS; RIGHT?  
01:44:59 3 A. I'M NOT AN ENGINEER. THAT'S SOMETHING THAT PROBABLY  
01:45:02 4 SOMEBODY ELSE WOULD TECHNICALLY SAY, CAN YOU DRAW A CORRELATION  
01:45:05 5 FROM THAT.  
01:45:06 6 Q. I WILL LET YOU OFF THE HOOK ON THAT ONE.  
01:45:09 7 NOW YOU MENTIONED HUAWEI BRIEFLY, YOU KNOW WHO CHARLIE  
01:45:12 8 GIANCARLO IS?  
01:45:13 9 A. YES. GOOD MAN.  
01:45:14 10 Q. HE USED TO WORK FOR YOU. HE WAS A SENIOR ENGINEER AT  
01:45:21 11 CISCO FOR MANY YEARS?  
01:45:22 12 A. YES.  
01:45:23 13 Q. HE WAS SENIOR EXECUTIVE, I BELIEVE CHIEF TECHNOLOGY  
01:45:25 14 OFFICER AT ONE POINT?  
01:45:26 15 A. PROBABLY.  
01:45:27 16 Q. NOW HE TESTIFIED EARLIER LAST WEEK THAT HE WAS THE  
01:45:29 17 BUSINESS EXECUTIVE RESPONSIBLE FOR THE HUAWEI LITIGATION.  
01:45:32 18 DO YOU HAVE ANY REASON TO DOUBT THAT?  
01:45:34 19 A. I DON'T KNOW THAT WE DESIGNATED HIM AS AN EXEC. HE WAS  
01:45:41 20 ONE OF THE PEOPLE WHO FOCUSED ON THE HUAWEI LITIGATION.  
01:45:44 21 Q. AND HE SAID HE WAS A PROPONENT OF THE LAWSUIT?  
01:45:46 22 A. YES, HE WAS.  
01:45:47 23 Q. OKAY. AND HE MENTIONED THAT HE MADE AT LEAST TWO TRIPS TO  
01:45:52 24 CHINA TO TALK WITH HUAWEI ABOUT THEIR USE OF CISCO TECHNOLOGY.  
01:45:56 25 IS THAT CONSISTENT WITH YOUR RECOLLECTION TOO?

01:45:58 1 A. I DO NOT REMEMBER THAT AT ALL. IT'S POSSIBLE IT MAY BE.

01:46:03 2 I DON'T KNOW IF I REMEMBER IT.

01:46:04 3 Q. BUT YOU WOULD TRUST MR. GIANCARLO IF HE SAID HE MADE A

01:46:08 4 COUPLE OF TRIPS TO CHINA AS A CISCO EXECUTIVE. YOU DON'T HAVE

01:46:11 5 ANY REASON TO QUESTION THAT, DO YOU?

01:46:12 6 A. I DON'T HAVE ANY REASON TO QUESTION HE MADE TRIPS TO

01:46:17 7 CHINA, I WAS NOT AWARE THAT HE TALKED TO HUAWEI EXECUTIVES ON

01:46:21 8 CLI.

01:46:21 9 Q. OKAY. WHAT HE TESTIFIED TO WAS THAT HE TRIED TO RESOLVE

01:46:24 10 THE ISSUE THROUGH NEGOTIATION AND COMPROMISE EVEN THOUGH THE

01:46:30 11 CLAIM WAS THAT HUAWEI HAD COPIED SOURCE CODE IN THE PRODUCT.

01:46:34 12 IS THAT CONSISTENT WITH YOUR RECOLLECTION TOO?

01:46:37 13 A. I DON'T KNOW THAT HE TRIED TO RESOLVE IT WITH HUAWEI. I

01:46:40 14 CAN'T COMMENT ON THAT ONE WAY OR THE OTHER, BUT HUAWEI DID COPY

01:46:44 15 OUR SOURCE CODE AS WELL, YES.

01:46:45 16 Q. THEY COPIED YOUR SOURCE CODE, AND EVENTUALLY THERE WAS A

01:46:47 17 COMPROMISE, BUT YOU HAD TO FILE A LAWSUIT FIRST; RIGHT?

01:46:51 18 A. (REDACTED)

01:47:00 19 Q. ACTUALLY, MR. CHAMBERS, THE JURY HAS ALREADY SEEN THERE

01:47:03 20 WAS A SETTLEMENT AGREEMENT BETWEEN THE COMPANIES, SO THEY HAVE

01:47:05 21 THAT INFORMATION.

01:47:06 22 NOW, I THINK YOU DESCRIBED MS. ULLAL AS A GOOD PERSON.

01:47:11 23 A. YES, SHE IS. I LIKE HER.

01:47:13 24 Q. AND SHE'S A GOOD FRIEND OF YOURS?

01:47:16 25 A. SHE IS A GOOD FRIEND, YES.

01:47:18 1 Q. AND SHE WAS A LONG TIME EXECUTIVE AT CISCO; RIGHT?

01:47:21 2 A. SHE KNEW OUR CULTURE VERY WELL.

01:47:24 3 Q. YOU SAID THIS MORNING THERE WERE 180 OR 190 ACQUISITIONS

01:47:28 4 WHILE YOU WERE CEO?

01:47:29 5 A. 180 WHEN I WAS CEO, PROBABLY ABOUT 190 TO 197 NOW.

01:47:34 6 Q. AND THOSE ACQUISITIONS, GENERALLY, THAT'S WHEN YOU GO

01:47:36 7 OUTSIDE CISCO TO GET TECHNOLOGY THAT YOU DON'T HAVE INSIDE THE

01:47:39 8 COMPANY; RIGHT?

01:47:39 9 A. RIGHT, TALENT YOU DON'T HAVE.

01:47:42 10 Q. AND THE MS. ULLAL CAME TO CISCO THAT WAY, YOU ACQUIRED A

01:47:48 11 COMPANY SHE WAS WORKING WITH AT THE TIME?

01:47:49 12 A. THAT WAS CRESCENDO.

01:47:51 13 Q. THAT'S RIGHT. AND THAT CRESCENDO PRODUCT BECAME A BIG

01:47:54 14 SELLER TOO?

01:47:55 15 A. YES.

01:47:55 16 Q. CATALYST?

01:47:56 17 A. YES.

01:47:56 18 Q. VERY SUCCESSFUL.

01:47:58 19 AND MS. ULLAL CONTINUED RUNNING THAT AS A CISCO EXECUTIVE

01:48:02 20 BECAUSE SHE HAD BEEN WORKING ON IT AT CRESCENDO BEFORE YOU

01:48:04 21 ACQUIRED THAT COMPANY, CORRECT?

01:48:06 22 A. I THINK THAT'S PROBABLY TOO SIMPLE A CORRELATION. WE

01:48:09 23 BROUGHT OVER A TEAM OF ABOUT FOUR OR FIVE KEY PEOPLE HEADED BY

01:48:13 24 MARIO AND LUCA AND PRIM AND SUNNY. SO PROBABLY FOUR OR FIVE IN

01:48:18 25 THE GROUP. MARIO IS THE GROUP LEADER.

01:48:21 1 Q. SO MS. ULLAL, SHE RAN IT ALONG WITH OTHER PEOPLE, THAT'S A  
01:48:24 2 FAIR STATEMENT?

01:48:24 3 A. THAT'S A FAIR STATEMENT, YES.

01:48:26 4 Q. NOW MR. BECHTOLSHEIM, HE ALSO CAME THROUGH A DIFFERENT  
01:48:29 5 ACQUISITION, RIGHT?

01:48:30 6 A. THROUGH GRANITE.

01:48:31 7 Q. RIGHT. GRANITE WAS ANOTHER COMPANY YOU ACQUIRED AND  
01:48:34 8 THAT'S HOW MR. BECHTOLSHEIM BECAME A CISCO EXECUTIVE; RIGHT?

01:48:37 9 A. THAT'S CORRECT.

01:48:37 10 Q. HE WAS ALREADY A CELEBRATED PERSON, HE WAS A COFOUNDER OF  
01:48:42 11 SUN, SO HE WAS ALREADY A WELL KNOWN ENGINEER IN THE VALLEY  
01:48:45 12 BEFORE YOU ACQUIRED GRANITE WHICH WAS HIS COMPANY AT THE TIME;  
01:48:49 13 RIGHT?

01:48:49 14 A. THAT IS CORRECT.

01:48:49 15 Q. NOW I THINK YOU SAID THAT MS. ULLAL CONTRIBUTED TO CISCO  
01:48:55 16 AND ITS SUCCESS?

01:48:56 17 A. YES, SHE DID.

01:48:57 18 Q. AND SHE HAD RESPONSIBILITIES AS A CISCO EXECUTIVE FOR  
01:49:02 19 VARIOUS PRODUCT LINES WHILE SHE WAS THERE?

01:49:05 20 A. THAT'S CORRECT.

01:49:06 21 Q. I THINK YOU CALLED HER ONE OF THE TOP WOMEN IN  
01:49:09 22 ENGINEERING?

01:49:10 23 A. IN OUR ENGINEERING GROUP, SHE WAS.

01:49:11 24 Q. AND AFTER SHE LEFT, SHE LEFT ON GOOD TERMS; RIGHT?

01:49:14 25 A. YES, SHE DID.

01:49:15 1 Q. YOU THROUGH HER A PARTY?

01:49:16 2 A. YES, WE DID.

01:49:18 3 Q. YOU HAD A BIG PRESS RELEASE?

01:49:19 4 A. I GAVE HER A GOOD TOAST.

01:49:20 5 Q. OKAY. AND THEN YOU TWO STAYED IN TOUCH; RIGHT?

01:49:23 6 A. WE TEXTED AND WOULD TALK OVER TIME.

01:49:27 7 Q. SHE TEXTED YOU ON YOUR BIRTHDAY, FOR EXAMPLE. YOU TALKED

01:49:30 8 ABOUT -- YOU SHARED FAMILY INFORMATION AND TALKED OCCASIONALLY

01:49:33 9 FROM TIME TO TIME?

01:49:34 10 A. THAT IS CORRECT.

01:49:35 11 Q. AND YOU CONSIDERED HER A FRIEND THROUGHOUT THAT TIME?

01:49:37 12 A. YES, I DID.

01:49:37 13 Q. BUT I TAKE IT, MR. CHAMBERS, AS YOU TOLD US THIS MORNING,

01:49:41 14 YOU DIDN'T PICK UP THE PHONE AND CALL HER BEFORE THIS LAWSUIT

01:49:44 15 WAS FILED; RIGHT?

01:49:45 16 A. THAT IS CORRECT.

01:49:46 17 Q. IN FACT, WHAT YOU DID WAS YOU FILED THE LAWSUIT AND A

01:49:52 18 PRESS RELEASE THE SAME DAY?

01:49:53 19 A. THAT IS CORRECT.

01:49:53 20 Q. AND NOBODY FROM CISCO CONTACTED ANYONE FROM ARISTA TO

01:49:58 21 COMPLAIN ABOUT THEIR CLI BEFORE THIS LAWSUIT WAS FILED; ISN'T

01:50:01 22 THAT RIGHT?

01:50:01 23 A. THAT IS PROBABLY CORRECT.

01:50:03 24 Q. DO YOU KNOW HOW LONG ARISTA HAS BEEN OUT USING ITS CLI AND

01:50:11 25 REFERRING TO IT AS CISCO-LIKE; DO YOU HAVE ANY IDEA HOW LONG

01:50:15 1 THAT'S BEEN?

01:50:16 2 A. THE DATE THE FIRST TIME I BECAME AWARE OF IT WAS SPRING OF

01:50:21 3 2014. SO I DON'T KNOW THE OTHER PART OF THE QUESTION IN TERMS

01:50:23 4 OF DATES.

01:50:23 5 Q. WOULD YOU BE SURPRISED TO LEARN THAT ARISTA HAS BEEN USING

01:50:27 6 THE CLI SINCE 2008 WHEN THEY FIRST LAUNCHED THEIR PRODUCT?

01:50:32 7 A. WOULD I BE SURPRISED THAT THEY ARE USING THE MAJORITY OF

01:50:37 8 OUR COMMANDS, ET CETERA, FROM 2008? YES, I WOULD, ABSOLUTELY.

01:50:42 9 Q. SO --

01:50:44 10 A. AND OUR PATENTS.

01:50:45 11 Q. SO MR. CHAMBERS, I TAKE IT EVEN THOUGH YOU AND CISCO

01:50:50 12 CONTENDED THAT HUAWEI SLAVISHLY COPIED SOURCE CODE, YOU TREATED

01:50:54 13 HUAWEI BETTER THAN ARISTA; ISN'T THAT RIGHT?

01:50:58 14 A. NO, WE WERE VERY FIRM ON BOTH. I'M VERY COMFORTABLE WITH

01:51:04 15 HOW WE COMPETE AND VERY COMFORTABLE WITH OUR DECISIONS HERE.

01:51:07 16 MR. VAN NEST: I HAVE NO FURTHER QUESTIONS,

01:51:08 17 YOUR HONOR.

01:51:08 18 THE COURT: THANK YOU.

01:51:09 19 MR. DESMARAIS, REDIRECT?

01:51:11 20 MR. DESMARAIS: YES, YOUR HONOR.

01:51:11 21 THANK YOU.

01:51:50 22 THE WITNESS: LONG DAYS.

01:51:51 23 THE COURT: YES.

01:51:15 24 **REDIRECT EXAMINATION**

01:51:52 25 BY MR. DESMARAIS:

01:51:52 1 Q. HELLO AGAIN, MR. CHAMBERS.

01:51:58 2 A. HELLO.

01:51:59 3 Q. LET ME JUST ASK YOU A FEW THINGS.

01:52:02 4 A. SURE.

01:52:03 5 Q. FIRST OF ALL, PICKING UP ON ONE OF THE LAST TOPICS, THE

01:52:09 6 HUAWEI LITIGATION, AND WE LOOKED AT TRIAL EXHIBIT 4671, IF YOU

01:52:14 7 COULD LOOK IN YOUR BOOK THAT I GAVE YOU THIS MORNING?

01:52:23 8 A. THIS ONE?

01:52:25 9 Q. YES. THIS IS THE TRIAL EXHIBIT 4671, IT IS THE ACTUAL

01:52:31 10 COMPLAINT FROM THE HUAWEI LITIGATION; IS THAT RIGHT, SIR?

01:52:36 11 A. THAT IS CORRECT.

01:52:37 12 Q. AND IN YOUR TESTIMONY THIS MORNING YOU REVIEWED WITH THE

01:52:40 13 JURY THAT IN PARAGRAPH 15, THE CISCO CLI WAS SPECIFICALLY

01:52:43 14 CALLED OUT IN THE PUBLIC COMPLAINT AGAINST HUAWEI; DO YOU

01:52:46 15 RECALL TESTIFYING ABOUT THAT?

01:52:47 16 A. YES.

01:52:47 17 Q. AND WE LOOKED AT PARAGRAPH 17 WHICH TALKED AGAIN ABOUT

01:52:53 18 HUAWEI'S WHOLESALE COPYING OF THAT CLI; RIGHT?

01:52:56 19 A. YES.

01:52:56 20 Q. NOW IS THERE ANY DOUBT IN YOUR MIND THAT THE HUAWEI CASE

01:53:02 21 WAS ABOUT THE COPYING OF CISCO'S CLI?

01:53:10 22 A. IT WAS ONE OF THE KEY ELEMENTS, YES, AND IT WAS BOTH THE

01:53:12 23 PATENTS AND THE COPYRIGHT INFRINGEMENTS AS WELL. SO IT WAS THE

01:53:15 24 COMBINATION, JUST LIKE ARISTA.

01:53:17 25 MR. VAN NEST: OBJECTION. MOVE TO STRIKE,

01:53:18 1 YOUR HONOR.

01:53:25 2 THE COURT: OVERRULED.

01:53:28 3 BY MR. DESMARAIS:

01:53:28 4 Q. (REDACTED)

01:53:43 5 Q. AND NOW YOU WERE ASKED QUESTIONS ABOUT CISCO'S SALE

01:53:51 6 SHEETS; DO YOU RECALL THAT TESTIMONY ON CROSS-EXAMINATION?

01:53:53 7 A. YES.

01:53:54 8 Q. ASK THOSE WERE CISCO'S SALES SHEETS TO SELL CISCO

01:53:57 9 SWITCHES; RIGHT?

01:53:58 10 A. YES, THEY ARE.

01:53:59 11 Q. AND WHEN CISCO SELLS ITS SWITCHES, DOES IT USE THOSE SALES

01:54:05 12 SHEETS WITH CISCO CUSTOMERS?

01:54:07 13 A. SOMETIMES DO, SOMETIMES DON'T, DEPENDS ON THE SALES TEAM.

01:54:12 14 Q. AND MR. VAN NEST SHOWED YOU STATEMENTS IN THOSE SALES

01:54:18 15 SHEETS OF CISCO SELLING CISCO PRODUCTS TO CISCO CUSTOMERS THAT

01:54:21 16 USE TERMS ABOUT BEING AN INDUSTRY STANDARD AND CLI RESEMBLING

01:54:26 17 EARLIER CLI'S.

01:54:30 18 DID YOU SEE ANYWHERE IN ANY OF THOSE DOCUMENTS WHERE CISCO

01:54:33 19 SAID ITS PARTICULAR CLI COMMANDS WERE FREE FOR ALL TO COPY?

01:54:39 20 A. NO, AND THAT'S EXACTLY THE POINT.

01:54:41 21 Q. DID YOU SEE A DOCUMENT IN YOUR PREPARATION FOR YOUR

01:54:45 22 TESTIMONY OR IN YOUR ENTIRE TIME AT CISCO WHERE CISCO EVER TOLD

01:54:50 23 ANYBODY UNDER ANY CIRCUMSTANCES THAT THEIR COMMANDS, THE

01:54:56 24 SPECIFIC LANGUAGE THEY USE IN THE CISCO SWITCHES, WAS FREE TO

01:55:01 25 COPY?

01:55:02 1 A. NO, I DID NOT.

01:55:03 2 Q. DOES CISCO OBJECT IF A COMPETITOR USES A CLI-TYPE OF

01:55:09 3 INTERFACE WITH THEIR SWITCHES?

01:55:11 4 A. OF COURSE NOT. A LARGE NUMBER OF COMPANIES DO USE THAT OR

01:55:14 5 THE GRAPHIC CAPABILITY. THAT'S MORE JUST IN APPROACH TO THE

01:55:17 6 MARKET.

01:55:22 7 Q. NOW YOU WERE ASKED ABOUT INSIEME; DO YOU RECALL THAT ON

01:55:28 8 CROSS-EXAMINATION?

01:55:28 9 A. UH-HUH.

01:55:29 10 Q. LET'S TALK A LITTLE BIT ABOUT INSIEME. WHO SET UP

01:55:36 11 INSIEME?

01:55:38 12 A. THE CONCEPT WAS MY IDEA. IT WAS SET UP BY MARIO, PRIM,

01:55:44 13 LUCA AND SONNY, WE CAN IDENTIFY THEM BY FIRST NAME, A GROUP

01:55:48 14 THAT HAS DONE IT FOR ME TWO TIMES BEFORE.

01:55:51 15 SO WHEN WE NEED TO MOVE RAPIDLY IN AN AREA, WE USE THIS

01:55:55 16 TYPE OF CONCEPT, IT'S WORKED VERY WELL. WE CATCH UP OUR TO OUR

01:55:58 17 COMPETITION VERY WELL THAT WAY.

01:55:59 18 Q. SO LET'S JUST DRILL DOWN ON THAT VERY SPECIFICALLY SO THE

01:56:03 19 JURY UNDERSTANDS, MARIO, LUCA, PRIM AND SONNY WERE CISCO

01:56:07 20 EMPLOYEES; AM I RIGHT, SIR?

01:56:09 21 A. THEY HAD BEEN AT THIS TIME, I BROUGHT THEM BACK FROM

01:56:14 22 RETIREMENT.

01:56:14 23 Q. AND SO INSIEME WAS YOUR IDEA; RIGHT?

01:56:18 24 A. YES.

01:56:19 25 Q. RUN BY CISCO EMPLOYEES; RIGHT?

01:56:22 1 A. CISCO PAST EMPLOYEES AND CISCO FUTURE EMPLOYEES, CORRECT.

01:56:27 2 Q. AND DID YOU SET UP THE MILESTONES THAT THESE CISCO

01:56:31 3 EMPLOYEES WERE SUPPOSED TO MEET AT INSIEME?

01:56:35 4 A. THAT WAS ONE THAT OUR BUSINESS DEVELOPMENT GROUP IN

01:56:38 5 COMBINATION WITH THE INSIEME GROUP AGREED UPON, BUT I DID

01:56:42 6 REVIEW THE MILESTONES, YES.

01:56:43 7 Q. AND WHEN THEY ULTIMATELY HIT -- WHEN THE CISCO EMPLOYEES

01:56:51 8 RUNNING THE COMPANY ULTIMATELY HIT THE MILESTONES THAT YOU SET,

01:56:55 9 WHAT HAPPENED NEXT?

01:56:56 10 A. THAT COULD TRIGGER THAT THEY BECAME PART OF CISCO, WHICH

01:57:00 11 WAS OUR INTENTION FROM THE VERY BEGINNING.

01:57:02 12 Q. AND YOU WERE ASKED SOME QUESTIONS EARLIER ON IN YOUR

01:57:05 13 TESTIMONY ABOUT SALES SHEETS THAT YOU GOT FROM THE 2010, 2011

01:57:12 14 TIME PERIOD; DO YOU RECALL THOSE QUESTIONS?

01:57:13 15 A. YES, I DO.

01:57:14 16 Q. WHAT SWITCH WERE YOU SELLING IN THE 2010, 2011 TIME

01:57:18 17 PERIOD?

01:57:19 18 A. THE 7000.

01:57:20 19 Q. AND WHAT SWITCH DID YOU BEGIN SELLING AFTER THE INSIEME

01:57:24 20 SPIN IN?

01:57:24 21 A. OH, THE 9000.

01:57:26 22 Q. SO DID MR. VAN NEST SHOW YOU ANY SALES SHEETS ABOUT HOW

01:57:30 23 CISCO COMPETED AGAINST ARISTA ON THE NEXUS 9000 PRODUCT?

01:57:38 24 A. HE DID NOT.

01:57:43 25 Q. LET'S LOOK AT SLIDE, PLEASE, CHAMBERS 3.

01:57:57 1 IS THIS THE INSIEME SWITCH, SIR?

01:58:00 2 A. YES, IT IS. THEY ARE A FAMILY OF SWITCHES. THE BIG ONE,

01:58:05 3 THE MIDDLE SIZE AND THE LOWER ONES.

01:58:06 4 Q. AND DOWN AT THE BOTTOM WHERE IT SAYS, 2014 BEST OF

01:58:11 5 INTEROP, TELL US AGAIN WHAT THAT MEANS?

01:58:13 6 A. IT MEANS WE WERE THE TOP DATA CENTER SWITCH BEATING OUT

01:58:18 7 ARISTA AND OTHER COMPETITORS.

01:58:19 8 Q. WAS THE ARISTA SWITCH SPECIFICALLY CONSIDERED AT THAT

01:58:21 9 INTEROP SHOW?

01:58:22 10 A. YES, IT WAS.

01:58:22 11 Q. AND CISCO WON THAT COMPETITION; RIGHT?

01:58:24 12 A. YES, WE DID.

01:58:25 13 Q. IS THAT WHY MR. VAN NEST DIDN'T SHOW YOU ANY SALES SHEETS

01:58:29 14 ABOUT HOW WELL --

01:58:30 15 MR. VAN NEST: OBJECTION, YOUR HONOR. ARGUMENTATIVE.

01:58:33 16 THE COURT: SUSTAINED.

01:58:34 17 BY MR. DESMARAIS:

01:58:34 18 Q. HOW YOU ARE DOING TODAY ON A HEAD-TO-HEAD COMPARISON IS

01:58:38 19 ARISTA SWITCHES?

01:58:39 20 A. WE ARE WINNING A MUCH LARGER PERCENTAGE OF THE TIME.

01:58:48 21 Q. SO WOULD YOU SAY THAT YOUR INNOVATION AT CISCO WITH

01:58:53 22 DEVELOPMENT OF THE NEXUS 9000 SWITCH HAS BEEN SUCCESSFUL?

01:58:57 23 A. TREMENDOUSLY SUCCESSFUL. JUST TO SHARE THE DATA, WE GOT

01:59:01 24 APPROXIMATELY 9500 CUSTOMERS. ARISTA HAS ABOUT 4,000. WE HAVE

01:59:07 25 ABOUT AROUND \$2.4 BILLION GROWING DRAMATICALLY FASTER THAN

01:59:14 1 ARISTA HAS.

01:59:14 2 IT'S BEEN A TREMENDOUS SUCCESS. PROBABLY ONE OF THE BEST

01:59:17 3 FINANCIAL DECISIONS OR ACQUISITIONS AND R&D INVESTMENT WE'VE

01:59:21 4 MADE AS A COMPANY.

01:59:22 5 BUT AGAIN, THE SPINNING CONCEPT WORKS WELL FOR US ON

01:59:25 6 MARKETING TRANSITIONS.

01:59:26 7 Q. NOW NONTHELESS, YOU ARE PROUD IN THE NEXUS 9000 SWITCH

01:59:31 8 TECHNICALLY, AND YOU WON THE INTEROP COMPETITION WITH ARISTA,

01:59:35 9 ARE YOU STILL TODAY, LOSING SALES TO ARISTA IN THE MARKETPLACE?

01:59:38 10 MR. VAN NEST: OBJECTION, YOUR HONOR.

01:59:39 11 OUTSIDE THE SCOPE OF THE CROSS.

01:59:41 12 THE COURT: SUSTAINED.

01:59:45 13 MR. DESMARAIS: NO FURTHER QUESTIONS.

01:59:47 14 THE COURT: THANK YOU.

01:59:48 15 MR. VAN NEST, ANYTHING FURTHER FOR MR. CHAMBERS?

01:59:50 16 MR. VAN NEST: NO, YOUR HONOR. HE MAY BE EXCUSED.

01:59:52 17 THE COURT: MR. CHAMBERS, THANK YOU FOR YOUR

01:59:53 18 TESTIMONY. YOU ARE FREE TO GO.

01:59:54 19 THE WITNESS: YOUR HONOR, IT'S A PLEASURE. THANK YOU

01:59:57 20 TO THE JURY AND THANK YOU ALL.

01:59:58 21 THE COURT: MR. NELSON, YOUR NEXT WITNESS.

02:00:11 22 MR. NELSON: YOUR HONOR, WE DON'T HAVE ANY MORE

02:00:14 23 WITNESSES AT THIS POINT, SUBJECT TO THE AGREEMENT REGARDING THE

02:00:19 24 GENTLEMAN THAT'S GOING TO COME TOMORROW AFTERNOON.

02:00:21 25 THE COURT: ALL RIGHT. SO YOU ARE NOT TECHNICALLY

02:00:23 1 RESTING, BUT YOU ARE GOING TO TURN IT OVER TO MR. VAN NEST?

02:00:26 2 MR. NELSON: CORRECT, YOUR HONOR.

02:00:27 3 THE COURT: OKAY.

02:00:29 4 ALL RIGHT. MR. VAN NEST?

02:00:31 5 MR. VAN NEST: THANK YOU, YOUR HONOR.

02:00:33 6 YES, MR. SILBERT WILL BE PRESENTING KEN DUDA.

02:00:44 7 THE COURT: AND MR. DUDA, IF YOU WOULD COME FORWARD

02:00:46 8 TO THE WITNESS STAND, PLEASE AND STAND TO BE SWORN.

02:00:53 9 **(DEFENDANT'S WITNESS, KENNETH DUDA, WAS SWORN.)**

02:00:54 10 THE WITNESS: YES.

02:01:14 11 MR. SILBERT: I APOLOGIZE, YOUR HONOR. IF I MAY HAVE

02:01:16 12 ONE MOMENT.

02:01:16 13 THE COURT: PLEASE TAKE YOUR TIME. I JUST WANT TO

02:01:18 14 MAKE SURE THAT EASEL IS NOT TOO FAR AWAY FROM THE JURY.

02:01:23 15 SOMETIMES WE MOVE IT UP HERE TO THE VERY --

02:01:27 16 MR. VAN NEST: YOU WANT IT OVER HERE?

02:01:28 17 THE COURT: WELL, I WANT IT TO BE IN A PLACE WHERE

02:01:31 18 THE JURY CAN SEE IT, SO IT JUST DEPENDS ON HOW BIG YOU WRITE.

02:01:36 19 OKAY. THAT'S GOOD. THANK YOU.

02:01:40 20 **DIRECT EXAMINATION**

02:01:41 21 BY MR. SILBERT:

02:01:42 22 Q. GOOD AFTERNOON, MR. DUDA.

02:01:43 23 A. GOOD AFTERNOON.

02:01:44 24 Q. YOU'VE TESTIFIED PREVIOUSLY, BUT WOULD YOU PLEASE JUST

02:01:47 25 INTRODUCE YOURSELF TO THE JURY AGAIN?

02:01:49 1 A. YES. MY NAME IS KEN DUDA. I'M ONE OF THE FOUNDERS FOR  
02:01:53 2 ARISTA NETWORKS.

02:01:54 3 Q. AND WOULD YOU TELL US A LITTLE BIT ABOUT YOUR FAMILY?

02:01:58 4 A. YES. I HAVE BEEN MARRIED FOR 23 YEARS, TO MY COLLEGE  
02:02:03 5 SWEETHEART. WE HAVE TWO CHILDREN, TWO DAUGHTERS, AGES 10 AND  
02:02:07 6 12.

02:02:07 7 Q. AND YOU SAID YOU ARE ONE OF THE FOUNDERS OF ARISTA, WHAT  
02:02:10 8 IS YOUR CURRENT TITLE?

02:02:12 9 A. I'M THE COMPANY'S CHIEF TECHNOLOGY OFFICER, AND SENIOR  
02:02:15 10 VICE PRESIDENT FOR SOFTWARE ENGINEERING.

02:02:17 11 Q. AND I WANT TO ASK YOU ABOUT YOUR EXPERIENCE WITH WRITING  
02:02:22 12 SOFTWARE, AND YOU TESTIFIED WHEN YOU WERE HERE BEFORE THAT YOU  
02:02:26 13 WROTE YOUR FIRST PARSER WHEN YOU WERE 12 YEARS OLD.

02:02:29 14 WHEN DID YOU FIRST START WRITING COMPUTER PROGRAMS?

02:02:33 15 A. I STARTED PROGRAMMING AT AGE 6.

02:02:36 16 Q. AND HOW DID THAT COME ABOUT?

02:02:39 17 A. MY FATHER WAS AN ARTIFICIAL INTELLIGENCE RESEARCHER AT  
02:02:44 18 SRI, A RESEARCH INSTITUTE IN MENLO PARK. AND HE WOULD TAKE ME  
02:02:48 19 IN AFTER HOURS TO USE THE DEC 10 MAINFRAME AT SRI. I LEARNED  
02:02:55 20 PROGRAMMING BASIC.

02:02:56 21 Q. AND WHEN YOU WERE GROWING UP, HOW MUCH TIME DID YOU SPEND  
02:03:01 22 PROGRAMMING?

02:03:02 23 A. OH, THROUGH MIDDLE SCHOOL AND JUNIOR HIGH SCHOOL, I LOVED  
02:03:06 24 PROGRAMMING. I WOULD DO MY HOMEWORK IN ONE CLASS TO FREE UP  
02:03:11 25 TIME TO PROGRAM WHEN I CAME HOME FROM SCHOOL.

02:03:13 1 SOMETIMES I WOULD GET UP ON A WEEKEND EARLY IN THE  
02:03:17 2 MORNING, AND THE NEXT THING I KNEW, MY MOM WAS CALLING ME TO  
02:03:21 3 DINNER, I WAS STILL IN MY PAJAMAS.  
02:03:24 4 Q. OKAY. DID THERE COME A TIME WHEN YOU REALIZED THAT YOU  
02:03:28 5 HAD A TALENT FOR WRITING COMPUTER PROGRAMS?  
02:03:32 6 A. YEAH, WHEN I WAS MAYBE IN -- AROUND 11 YEARS OLD. I  
02:03:37 7 ENTERED A PROGRAMMING COMPETITION AT A LOCAL SCHOOL INTENDED  
02:03:40 8 FOR SLIGHTLY OLDER KIDS, SEVENTH, EIGHTH AND NINTH GRADERS, AND  
02:03:45 9 I PLACED FIRST IN THAT COMPETITION.  
02:03:46 10 Q. AND WHAT WAS THE CHALLENGE THAT WAS GIVEN TO THE  
02:03:50 11 CONTESTANTS IN THAT COMPETITION?  
02:03:52 12 A. WE WERE ASKED TO WRITE A COMPUTER PROGRAM TO TRANSLATE  
02:03:55 13 ORDINARY NUMBERS INTO ROMAN NUMERALS.  
02:03:58 14 Q. AND WERE YOU GIVEN A PARTICULAR AMOUNT OF TIME IN WHICH TO  
02:04:02 15 COMPLETE THAT TASK?  
02:04:03 16 A. WE WERE GIVEN 30 MINUTES.  
02:04:05 17 Q. AND MR. DUDA, HOW LONG DID IT TAKE YOU AS AN 11-YEAR OLD  
02:04:11 18 CHILD TO WRITE A PROGRAM TO CONVERT REGULAR NUMBERS INTO ROMAN  
02:04:17 19 NUMERALS?  
02:04:18 20 A. IT TOOK ME SEVEN MINUTES.  
02:04:20 21 Q. WHEN DID YOU START SELLING, COMMERCIALLY, COMPUTER  
02:04:24 22 PROGRAMS THAT YOU HAD WRITTEN?  
02:04:26 23 A. WHEN I WAS 14 I WROTE A BULLETIN BOARD PROGRAM FOR THE IBM  
02:04:31 24 PC, WHICH I SOLD COMMERCIALLY.  
02:04:33 25 Q. AND MOVING AHEAD SOME IN TIME, WHERE DID YOU GET YOUR

02:04:40 1 COLLEGE AND POSTGRADUATE DEGREES?

02:04:43 2 A. I GOT THREE DEGREES IN ENGINEERING FROM MIT, AND A PH.D.

02:04:48 3 IN COMPUTER SCIENCE FROM STANFORD UNIVERSITY.

02:04:51 4 Q. OKAY. AND FOCUSING SPECIFICALLY NOW ON NETWORKING, HOW

02:04:57 5 DID YOU COME TO GAIN EXPERIENCE WITH NETWORKING SOFTWARE?

02:05:05 6 A. WELL, I DABBLED IN HIGH SCHOOL CREATING A NETWORK BETWEEN

02:05:08 7 MY COMPUTER AND MY FATHER'S COMPUTER.

02:05:11 8 I GOT A LITTLE MORE SERIOUS AS AN UNDERGRADUATE WHEN I

02:05:14 9 TAUGHT MYSELF NETWORK PROGRAMMING. I DID AN INTERNSHIP WITH A

02:05:17 10 COMPANY BUILDING TELEPHONE SWITCHES WHICH ARE A TYPE OF NETWORK

02:05:21 11 SWITCH.

02:05:22 12 AND THEN IN GRADUATE SCHOOL, I JOINED A RESEARCH GROUP IN

02:05:26 13 DISTRIBUTED SYSTEMS, WHICH OF COURSE COMMUNICATED VIA NETWORKS.

02:05:29 14 AND IN THAT GROUP, I WAS PARTLY RESPONSIBLE FOR TAKING CARE OF

02:05:32 15 OUR LOCAL NETWORK IN GAINING SOME HANDS-ON EXPERIENCE THERE.

02:05:36 16 Q. OKAY. WHAT WAS YOUR FIRST JOB AT AN ETHERNET SWITCH

02:05:39 17 COMPANY?

02:05:39 18 A. IT WAS GRANITE SYSTEMS, A STARTUP COFOUNDED BY

02:05:44 19 DAVID SHERATON AND ANDY BECHTOLSHEIM.

02:05:46 20 Q. AND WHAT DID YOU DO AT GRANITE?

02:05:49 21 A. I WAS THE FIRST SOFTWARE ENGINEER ON THE TEAM.

02:05:51 22 Q. AND WHAT TYPE OF PRODUCT DID GRANITE MAKE?

02:05:54 23 A. WE BUILT AN ETHERNET SWITCH, AND PARTICULARLY WE DESIGNED

02:05:59 24 THE FIRST GIGABIT ETHERNET SINGLE CHIP SWITCH.

02:06:03 25 Q. AND JUST, JUST ORIENT US IN TERMS OF TIME, WHAT YEAR ARE

02:06:07 1 YOU TALKING ABOUT NOW?

02:06:08 2 A. THAT WAS FROM APRIL OF 1995 UNTIL OCTOBER OF 2006.

02:06:13 3 Q. OKAY. SO YOU WERE AT GRANITE ABOUT --

02:06:17 4 A. SORRY, I THINK I GAVE THE WRONG DATES, SIR, 1995 TO ABOUT

02:06:23 5 1996, ABOUT ONE AND A HALF YEARS.

02:06:25 6 Q. OKAY. AND THEN WHERE DID YOU GO AFTER GRANITE?

02:06:27 7 A. WELL OUR COMPANY BUILT A PROTOTYPE, AND BASED ON THAT, WE

02:06:31 8 WERE ACQUIRED BY CISCO SYSTEMS IN OCTOBER OF 1996.

02:06:34 9 Q. AND SO DID YOU BECOME A CISCO EMPLOYEE BY VIRTUE OF THAT

02:06:39 10 ACQUISITION?

02:06:40 11 A. THAT'S RIGHT. I WORKED AT CISCO FOR TWO AND A HALF YEARS.

02:06:43 12 Q. AND WHY DID YOU LEAVE CISCO?

02:06:45 13 A. WELL, I FELT THE BIG COMPANY ENVIRONMENT WASN'T RIGHT FOR

02:06:50 14 ME. I WANTED TO TRY ANOTHER STARTUP.

02:06:52 15 Q. DID YOU GET AN OPPORTUNITY TO WORK AT A STARTUP AFTER YOU

02:06:56 16 LEFT CISCO?

02:06:56 17 A. I DID. I HAD TWO OPPORTUNITIES. I COULD JOIN A FRIEND

02:07:01 18 FROM STANFORD AT THERE.COM OR A DIFFERENT FRIEND FROM STANFORD

02:07:05 19 AT A SMALL STARTUP CALLED GOOGLE.

02:07:08 20 Q. OKAY. TELL ME ABOUT -- HOW DID THE OPPORTUNITY TO WORK AT

02:07:12 21 GOOGLE COME ABOUT AFTER YOU LEFT CISCO?

02:07:14 22 A. WELL, SERGEY BRIN WAS A FRIEND OF MINE FROM THE STANFORD

02:07:19 23 PROGRAM, AND HE TOOK ME TO THE ROOF OF THE STANFORD COMPUTER

02:07:22 24 SCIENCE BUILDING AND TYPED A PASSWORD INTO THIS WEBSITE CALLED

02:07:26 25 GOOGLE.COM, WHICH HE REVEALED A SEARCH ENGINE. AND HE

02:07:30 1 DEMONSTRATED TO ME THE SEARCH ENGINEER'S CAPABILITIES HOPING TO  
02:07:33 2 CONVINCE ME TO JOIN GOOGLE.  
02:07:35 3 Q. HE TOOK YOU TO THE ROOF OF THE SCIENCE BUILDING?  
02:07:38 4 A. YES, HE DIDN'T WANT PEOPLE TO SEE WHAT HE WAS UP TO, SO HE  
02:07:42 5 WENT THERE TO GET SOME PRIVACY.  
02:07:44 6 Q. AND WHAT DID YOU TELL SERGEY -- FIRST OF ALL, HOW MANY  
02:07:49 7 EMPLOYEES DID GOOGLE HAVE BACK AT THIS TIME?  
02:07:51 8 A. FEWER THAN 20.  
02:07:52 9 Q. AND WHAT DID YOU TELL SERGEY BRIN WHEN HE TRIED TO  
02:07:57 10 CONVINCE YOU TO JOIN HIS SMALL STARTUP COMPANY GOOGLE?  
02:08:00 11 A. WELL, I TOLD HIM THERE WAS NO WAY TO MAKE ANY MONEY IN  
02:08:04 12 SEARCH, THAT BANNER ADS DIDN'T WORK, AND THAT IF THEY DID FIND  
02:08:08 13 SOME WAY TO MAKE MONEY, THEN SURELY MICROSOFT WOULD REPLICATE  
02:08:12 14 THE TECHNOLOGY, BUILD IT INTO THE BROWSER AND CUT THEM OUGHT OF  
02:08:15 15 THE MARKET.  
02:08:15 16 Q. SO YOU TOLD MR. BRIN THAT GOOGLE WOULD NOT BE A SUCCESS?  
02:08:18 17 A. THAT'S RIGHT.  
02:08:19 18 Q. AND BETWEEN GOOGLE AND THE OTHER SMALL STARTUP COMPANY  
02:08:23 19 THAT YOU MENTIONED, WHICH OF THOSE DID YOU DECIDE TO GO WORK  
02:08:27 20 FOR?  
02:08:27 21 A. I PICKED THERE.COM OVER GOOGLE. AND I DON'T KNOW ANYBODY  
02:08:30 22 WHO HAS MADE A BIGGER CAREER MISTAKE.  
02:08:33 23 Q. AND JUST WHAT KIND OF COMPANY WAS THERE.COM?  
02:08:38 24 A. WE WERE BUILDING A DISTRIBUTED VIRTUAL WORLD, A 3D  
02:08:43 25 ENVIRONMENT, THAT YOU ACCESS ONLINE TO SOCIALIZE, PLAY GAMES

02:08:46 1 AND HANG OUT WITH FRIENDS.

02:08:48 2 Q. OKAY. AND SOME FOLKS ARE FAMILIAR WITH SOMETHING CALLED

02:08:51 3 SECOND LIFE, WAS IT SIMILAR TO THAT?

02:08:53 4 A. YES, WE REGARDED SECOND LIFE AS A SIMILAR PRODUCT.

02:08:57 5 Q. AND MAYBE YOU SAID THIS, BUT FOR HOW LONG WERE YOU AT

02:09:00 6 THERE.COM?

02:09:01 7 A. I WAS THERE FOR FIVE AND A HALF YEARS.

02:09:04 8 Q. AND WHAT DID YOU DO AFTER THERE.COM?

02:09:09 9 A. WELL, I LOOKED FOR A GOOD OPPORTUNITY, AND

02:09:15 10 ANDY BECHTOLSHEIM AND DAVID SHERATON WERE INTERESTED IN

02:09:18 11 STARTING ANOTHER COMPANY, SO I DECIDED TO START ARISTA ALONG

02:09:21 12 WITH THEM.

02:09:22 13 Q. OKAY. AND JUST AGAIN, FOR SAKE OF THE CHRONOLOGY, WHAT

02:09:26 14 YEAR WAS THAT?

02:09:27 15 A. THAT WAS 2004.

02:09:28 16 Q. NOW, AND YOU'VE MENTIONED ANDY BECHTOLSHEIM AND DAVID

02:09:33 17 SHERATON, HOW DID YOU KNOW DAVID SHERATON?

02:09:36 18 A. DAVID SHERATON WAS MY PH.D. ADVISOR AT STANFORD

02:09:42 19 UNIVERSITY.

02:09:42 20 Q. AND HOW DID YOU KNOW ANDY BECHTOLSHEIM?

02:09:44 21 A. DAVID INTRODUCED ME TO ANDY IN CONNECTION WITH GRANITE

02:09:48 22 SYSTEMS. DAVID AND ANDY WERE THE COFOUNDERS OF GRANITE.

02:09:52 23 I WORKED WITH ANDY FOR SEVERAL YEARS WHILE AT CISCO, AND

02:09:55 24 ANDY IS ONE OF THE SILICON VALLEY'S TRUE GENIUSES, IN MY

02:10:00 25 OPINION.

02:10:01 1 Q. SO WHEN YOU AND MR. BECHTOLSHEIM AND MR. SHERATON STARTED  
02:10:05 2 ARISTA, DID YOU INTEND TO MAKE ETHERNET SWITCHES?  
02:10:10 3 A. NO. OUR ORIGINAL PRODUCT WAS A VPN GATEWAY, A PRODUCT FOR  
02:10:16 4 CREATING VIRTUAL PRIVATE NETWORKS ACROSS THE INTERNET.  
02:10:19 5 Q. AND COULD YOU EXPLAIN JUST AT A HIGH LEVEL WHAT THAT  
02:10:24 6 MEANS?  
02:10:24 7 A. YES, SURE. COMPANIES BUILD NETWORKS THAT CONNECT THEIR  
02:10:29 8 OFFICES TOGETHER, CONNECT THEIR OFFICES TO DATA CENTERS. AND  
02:10:35 9 IN ORDER TO DO THAT THEY TYPICALLY LEASE CIRCUITS, LINES FROM  
02:10:40 10 TELEPHONE PROVIDERS. WE THOUGHT IT MIGHT BE MORE COST  
02:10:43 11 EFFECTIVE TO USE THE INTERNET INSTEAD, BUT PERHAPS THE INTERNET  
02:10:45 12 IS NOT RELIABLE ENOUGH.  
02:10:47 13 THE IDEA WAS BY USING MOBILE INTERNET CONNECTIONS  
02:10:51 14 TOGETHER, YOU COULD BUILD A RELIABLE PRIVATE CONNECTION BETWEEN  
02:10:54 15 YOUR COMPANY'S CAMPUSES.  
02:10:56 16 Q. DID YOU ATTEMPT TO BUILD THAT VPN PRODUCT AT ARISTA?  
02:11:00 17 A. WE DID. WE BUILT SOME SOFTWARE. I HAD A WORKING  
02:11:05 18 PROTOTYPE.  
02:11:05 19 Q. AND WHAT HAPPENED TO IT?  
02:11:06 20 A. WELL, I LOOKED INTO THE MARKET OPPORTUNITY AND CAME TO THE  
02:11:10 21 CONCLUSION THAT THE COSTS DIDN'T ACTUALLY MAKE SENSE, AND THE  
02:11:14 22 ECONOMICS DIDN'T SUPPORT ANY MARKET FOR OUR PRODUCT.  
02:11:18 23 Q. SO DID ARISTA DECIDE TO KILL THAT PRODUCT?  
02:11:21 24 A. WE DID. WE CANCELLED THE PRODUCT AND WENT FOR ABOUT TWO  
02:11:25 25 WEEKS WITHOUT ANY IDEA OF WHAT WE WERE GOING TO BUILD OR HOW WE

02:11:29 1 WOULD SURVIVE AS A COMPANY.

02:11:30 2 Q. OKAY. AND SO THEN WHAT HAPPENED AT ARISTA?

02:11:33 3 A. WELL, THEN ANDY BECHTOLSHEIM CAME AND CALLED A MEETING AND

02:11:37 4 SHOWED US A DESIGN HE HAD BEEN WORKING ON FOR A NEW NETWORK

02:11:41 5 SWITCH.

02:11:42 6 AND THE NUMBER OF INNOVATIONS IN THIS DESIGN, I ALMOST

02:11:47 7 CRIED, WE LOOKED AT EACH OTHER AND SAID, WE'VE GOT TO BUILD

02:11:50 8 THAT SWITCH.

02:11:51 9 Q. OKAY. AND JUST TELL US, AGAIN, AT A HIGH LEVEL, WHAT WAS

02:11:55 10 SO GOOD ABOUT IT?

02:11:55 11 A. OH, IT HAD SO MANY INNOVATIONS. THE WAY THAT IT MANAGES

02:12:01 12 TRAFFIC, TRAFFIC COMES IN ONE PORT, HAS TO GO OUT ANOTHER PORT.

02:12:06 13 IT NEEDS BANDWIDTH WITHIN THE SWITCH. HOW DO YOU ALLOCATE THAT

02:12:12 14 BANDWIDTH, WHAT DO YOU DO WITH THE PACKETS WHILE YOU ARE

02:12:14 15 WAITING FOR THAT BANDWIDTH TO BE AVAILABLE? THERE WERE

02:12:17 16 INNOVATIONS IN THE WAY THE FABRIC ARCHITECTURE WORKED TO MANAGE

02:12:20 17 THOSE TRAFFIC FLOWS.

02:12:21 18 IN ADDITION TO THAT WERE IMPROVEMENTS TO THE WAY THE

02:12:24 19 COMPONENTS WERE TO ARRANGE IN SPACE TO LET IT COOL THE SWITCH

02:12:27 20 BETTER, AND COOLING IS A BIG PROBLEM FOR BUILDING HIGHER

02:12:30 21 CAPACITY DEVICES.

02:12:31 22 Q. I WANT TO SHOW YOU DEMONSTRATIVE EXHIBIT 5594, AND ASK DO

02:12:42 23 YOU RECOGNIZE THIS?

02:12:43 24 A. YES.

02:12:44 25 Q. WHAT IS IT?

02:12:45 1 A. THIS IS A MOCKUP OF OUR 7500 SWITCH, THE SWITCH I WAS  
02:12:49 2 REFERRING TO EARLIER.

02:12:50 3 Q. AND WHEN AT ARISTA DID YOU CREATE THIS STYROFOAM MOCKUP?

02:12:56 4 A. I BELIEVE WE CREATED IT IN 2006.

02:12:58 5 Q. AND USING THIS MOCKUP, CAN YOU GIVE THE JURY AN EXAMPLE OF

02:13:05 6 SOMETHING THAT MADE ARISTA'S DESIGN DIFFERENT FROM THE DESIGN

02:13:09 7 OF OTHER ETHERNET SWITCHES?

02:13:11 8 A. SURE. IF YOU LOOK AT THE BACK, YOU WILL SEE ALL THE

02:13:14 9 CIRCLES.

02:13:17 10 Q. YOU CAN TAKE IT UP THERE.

02:13:27 11 A. THIS IS THE FRONT OF THE SWITCH. LOTS OF PORTS TO PLUG IN

02:13:35 12 CONNECTIONS TO COMPUTERS.

02:13:40 13 IN THE BACK YOU SEE A WHOLE WALL OF FANS, THESE THINGS PUT

02:13:45 14 OUT A LOT OF AIR BECAUSE THAT'S REQUIRED TO COOL THE SWITCH.

02:13:50 15 THE OTHER DESIGNS PUT THE FANS ON THE SIDES.

02:13:53 16 THE PROBLEMS WITH FANS ON THE SIDES IS THEY DON'T COOL FUN

02:13:56 17 FORMALLY ACROSS THE SWITCH, WHICH THEN MEANS THAT SOME PORTS

02:13:59 18 WIND UP TOO HOT WHILE OTHERS HAVE MORE COOLING THAN THEY NEED.

02:14:04 19 WHAT ENABLES YOU TO PULL THE AIR THROUGH THE SWITCH THIS

02:14:06 20 WAY IS THAT IN PREVIOUS DESIGNS, PACKETS THAT COME IN ONE LINE

02:14:10 21 CARD HAVE TO TRAVEL ACROSS A BACK FAN TO GET DOWN TO ANOTHER

02:14:14 22 LINE CARD.

02:14:16 23 THAT BACK FAN BLOCKS THE AIRFLOW, AND YOU CAN'T JUST PUNCH

02:14:19 24 HOLES IN IT BECAUSE YOU NEED EVERY WIRE YOU CAN GET TO CARRY

02:14:23 25 THE PACKETS.

02:14:24 1 THIS SWITCH HAS NO BACK FAN. INSTEAD, EACH OF THESE UNITS

02:14:29 2 HERE IS A FABRIC CARD, IT'S A VERTICALLY MOUNTED CARD

02:14:35 3 CONNECTING WITH THE HORIZONTALLY MOUNTED LINE CARD IN THE

02:14:38 4 MIDDLE OF THE SWITCH.

02:14:38 5 THE PACKETS COME IN THE LINE CARD, GO THROUGH THE MIDDLE

02:14:52 6 OF THE SWITCH, ENTER A FABRIC CARD, TRAVEL ALONG THE FABRIC

02:14:54 7 CARD, GO BACK THROUGH THE MIDDLE OF THE SWITCH, AND OUT THE

02:14:58 8 LINE CARD.

02:14:59 9 REMEMBER THESE FABRIC CARDS ARE MOUNTED IN LIKE SO, SO

02:15:03 10 THAT THE AIR CAN FLOW RIGHT THROUGH THE MIDDLE OF THE SWITCH,

02:15:06 11 FIRST PASSING OVER ALL LINE CARDS, THEN PASSING BETWEEN ALL THE

02:15:10 12 FABRIC CARDS BEING BLOWN OUT THE BACK.

02:15:13 13 I HAD NEVER SEEN ANYTHING LIKE THIS BEFORE.

02:15:15 14 Q. I WILL TAKE THAT FROM. THANK YOU, MR. DUDA.

02:15:20 15 WHAT YOU'VE DESCRIBED, WAS THAT THE ONLY NEW IDEA IN THIS

02:15:24 16 SWITCH?

02:15:24 17 A. NO. WE HAD IDEAS FOR THE SOFTWARE AS WELL.

02:15:30 18 Q. AND WHAT WAS YOUR MAIN ROLE WITH RESPECT TO THE NEW SWITCH

02:15:34 19 THAT ARISTA WAS DESIGNING?

02:15:35 20 A. I WAS RESPONSIBLE FOR THE SOFTWARE, THE SOFTWARE

02:15:38 21 ARCHITECTURE AND GETTING THE SOFTWARE BUILT.

02:15:40 22 Q. AND WHAT DID THAT ENTAIL?

02:15:44 23 A. IT MEANT PLANNING HOW -- DESIGNING THE SWITCH SOFTWARE,

02:15:48 24 FIGURING OUT HOW TO CONSTRUCT THE SOFTWARE TO SUPPORT THE NEEDS

02:15:51 25 OF OUR TARGET CUSTOMERS WHICH WERE THE CLOUD CUSTOMERS.

02:15:55 1 Q. AND HOW LONG DID IT TAKE ARISTA TO BUILD THE SWITCH THAT  
02:16:00 2 MR. BECHTOLSHEIM HAD ENVISIONED BACK IN THAT MEETING AFTER YOU  
02:16:04 3 KILLED THE VPN PRODUCT?  
02:16:06 4 A. IT TOOK NEARLY FIVE YEARS. WE DIDN'T DELIVER ANDY'S  
02:16:10 5 VISION UNTIL 2010.  
02:16:11 6 Q. AND WHY DID IT TAKE THAT LONG?  
02:16:13 7 A. SWITCHES ARE COMPLICATED. THERE ARE SO MANY PIECES TO GET  
02:16:17 8 RIGHT, SO MUCH THE SOFTWARE HAS TO DO TO MANAGE THE LINE CARDS  
02:16:21 9 AND THE FABRIC CARDS TO CONFIGURE THE FABRIC, TO ESTABLISH  
02:16:26 10 NETWORK CONNECTIONS WITH ADJACENT DEVICES, AND TO PROVIDE  
02:16:29 11 VISIBILITY TO THE CUSTOMER TO MANAGE THE NETWORK. IT'S JUST A  
02:16:33 12 LOT OF WORK.  
02:16:34 13 Q. OKAY. AND HOW MUCH HAS ARISTA SPENT ON RESEARCH AND  
02:16:38 14 DEVELOPMENT FROM THE TIME THAT IT WAS FOUNDED THROUGH TODAY?  
02:16:42 15 A. WE'VE SPENT MORE THAN \$750 MILLION ON RESEARCH AND  
02:16:47 16 DEVELOPMENT.  
02:16:48 17 Q. I WANT TO ASK YOU ABOUT THE DESIGN OF ARISTA SWITCHES. IS  
02:16:54 18 THERE SOME OVERARCHING FEATURE THAT DISTINGUISHES THE DESIGN OF  
02:17:00 19 ARISTA SWITCHES?  
02:17:01 20 A. WHAT'S MOST UNIQUE ABOUT OUR SWITCHES IS THE WAY WE BUILT  
02:17:05 21 THEM FROM THE GROUND UP TO TARGET THE CLOUD NETWORKING MARKET,  
02:17:08 22 THE NETWORKING FOR CLOUD COMPUTING.  
02:17:10 23 Q. AND WOULD YOU PLEASE JUST EXPLAIN FOR THE JURY WHEN YOU  
02:17:14 24 SAY "CLOUD NETWORKING," WHAT DO YOU MEAN BY THAT?  
02:17:17 25 A. SURE. TRADITIONALLY, NETWORKING COMPANIES HAVE FOCUSED ON

02:17:21 1 ENTERPRISES WHICH ARE BIG COMPANIES LIKE BIG BANKS AND  
02:17:25 2 INSURANCE COMPANIES THAT USE NETWORKS IN THEIR INTERNAL  
02:17:27 3 OPERATIONS. BUT WHAT ARISTA SAW WAS COMING WAS THE RISE OF THE  
02:17:32 4 BIG CLOUD COMPANIES, COMPANIES THAT RUN MASSIVE DATA CENTERS TO  
02:17:37 5 SUPPORT NEW APPLICATIONS LIKE WEB SEARCH TO MILLIONS OF  
02:17:40 6 MILLIONS OF PEOPLE.

02:17:41 7 Q. AND WHY DOES -- WHY DO CLOUD NETWORKS NEED THEIR OWN KIND  
02:17:47 8 OF ETHERNET SWITCH?

02:17:49 9 A. YEAH. THERE ARE THREE BIG REASONS FOR THAT.

02:17:52 10 ONE IS THAT THE CLOUD NETWORKS REQUIRE A LOT OF EAST, WEST  
02:17:58 11 BANDWIDTH BY WHICH WE MEAN BANDWIDTH FROM ONE SERVER TO ANOTHER  
02:18:04 12 IN THE DATA CENTER.

02:18:06 13 THE SECOND REASON IS WHEN YOU ARE AT THAT KIND OF SCALE  
02:18:08 14 BUILDING NETWORKS THAT LARGE, YOU NEED BETTER WAYS TO AUTOMATE.

02:18:12 15 AND THE THIRD REASON IS PROGRAMMABILITY. OUR CLOUD  
02:18:15 16 CUSTOMERS BENEFIT FROM BEING ABLE TO ADD THEIR OWN SOFTWARE TO  
02:18:18 17 OUR SWITCHES, WHICH IS SOMETHING NO OTHER SWITCHES AT THE TIME  
02:18:21 18 ALLOWED.

02:18:22 19 Q. I WANT TO ASK YOU TO EXPLAIN EACH OF THOSE, AGAIN BRIEFLY.  
02:18:28 20 BUT YOU REFER TO EAST WEST BANDWIDTH. WHAT DO YOU MEAN BY  
02:18:33 21 THAT?

02:18:33 22 A. EAST WEST BANDWIDTH REFERS TO COMMUNICATION DIRECTLY  
02:18:36 23 BETWEEN SERVERS IN A DATA CENTER. IF YOU THINK ABOUT OLD STYLE  
02:18:45 24 NETWORKS, YOU CHECK YOUR BALANCE AT AN ATM MACHINE. WELL, THE  
02:18:45 25 ATM MACHINE SENDS THE MESSAGE TO A SERVER, THE SERVER RESPONDS

02:18:50 1 WITH THE BALANCE. THERE'S NOT VERY MUCH BANDWIDTH REQUIRED.

02:18:53 2 BUT WHEN YOU SEARCH THE WEB, YOU SEND THAT SMALL SEARCH

02:18:58 3 REQUEST TO THE WEB SEARCH SERVER. AND THE AMOUNT OF INTERNAL

02:19:01 4 COMMUNICATION REQUIRED TO SEARCH THE WHOLE WEB AND RETURN THOSE

02:19:03 5 RESULTS RANKED BY IMPORTANCE WITH THE ADVERTISEMENTS INSERTED,

02:19:07 6 THERE'S A HUGE AMOUNT OF SERVER-TO-SERVER COMMUNICATION

02:19:10 7 REQUIRED TO THEN PROVIDE A FAIRLY SMALL RESPONSE BACK TO YOU.

02:19:14 8 AND OUR NETWORKS EXCEL AT PROVIDING THAT KIND OF

02:19:18 9 SERVER-TO-SERVER CONNECTIVITY.

02:19:20 10 Q. OKAY. YOU ALSO REFER TO THE SCALE OF CLOUD NETWORKS AND

02:19:24 11 THE NEED TO AUTOMATE. WHAT DID YOU MEAN BY THAT?

02:19:27 12 A. TRADITIONAL ENTERPRISES BUILD SMALL SCALE DEPLOYMENT OF

02:19:33 13 SPECIFIC APPLICATIONS. ORACLE DEPLOYMENT, PEOPLESOF

02:19:38 14 DEPLOYMENT, EACH WITH A SMALL AMOUNT OF NETWORKING AND

02:19:42 15 COMPUTERS AND STORAGE HARDWARE.

02:19:43 16 TO SCALE UP APPLICATIONS TO SUPPORT MILLIONS OF USERS,

02:19:45 17 CLOUD CUSTOMERS BUILD VERY LARGE REGULAR NETWORKS, THE SAME

02:19:51 18 STRUCTURE STAMPED OUT OVER AND OVER AND OVER AGAIN.

02:19:53 19 AND THEN AT THAT SCALE, THEY NEED TO AUTOMATE THE

02:19:57 20 OPERATION OF THOSE NETWORKS. YOU CAN'T JUST HAVE A PERSON

02:20:00 21 CONFIGURE 10,000 SWITCHES. YOU NEED TO GET COMPUTERS TO DO THE

02:20:04 22 WORK OF MANAGING THE NETWORK AS WELL, WHICH MEANS THE SWITCHES

02:20:08 23 HAVE TO BE AMENABLE TO THAT SORT OF AUTOMATION.

02:20:11 24 Q. OKAY. AND THE THIRD POINT YOU MENTIONED WAS

02:20:13 25 PROGRAMMABILITY. WHAT DID YOU MEAN BY PROGRAMMABILITY IN THIS

02:20:17 1 CONTEXT?

02:20:17 2 A. PROGRAMMABILITY MEANS OUR CUSTOMERS CAN ADD THEIR OWN

02:20:21 3 SOFTWARE TO OUR SWITCHES, WHICH THEY USE TO CONTROL THE TRAFFIC

02:20:26 4 THROUGH THEIR NETWORKS WITH A GREATER DEGREE OF PRECISION THAN

02:20:30 5 IS POSSIBLE WITH STANDARD NETWORK CONTROL PLANE FUNCTIONS.

02:20:35 6 Q. OKAY. AND WHAT ROLE DO SWITCHES SPECIFICALLY PLAY IN A

02:20:40 7 CLOUD NETWORK?

02:20:41 8 A. THE SERVERS SIT IN SERVER RACKS, BIG STACKS OF SERVERS,

02:20:47 9 RACK, AFTER RACK, ROW AFTER ROW. AT THE TOP OF EACH RACK

02:20:50 10 TYPICALLY IS A NETWORK SWITCH WITH A CABLE TO EACH SERVER IN

02:20:54 11 THE RACK.

02:20:55 12 AND THEN FIBER OPTIC LINKS TO AGGREGATION SWITCHES SO THAT

02:21:00 13 COMPUTER COMMUNICATION TRAVELS FROM ONE SERVER TO THE TOP OF

02:21:04 14 RACK SWITCH TO THE AGGREGATION SWITCH, AND THEN TO ANOTHER RACK

02:21:08 15 OR POTENTIALLY ANOTHER DATA CENTER.

02:21:10 16 Q. OKAY. I WANT TO ASK YOU ABOUT SOME OF THE FEATURES OF

02:21:16 17 ARISTA SWITCHES, IN PARTICULAR. BUT BEFORE I DO THAT, IS THERE

02:21:20 18 ONE PARTICULAR FEATURE THAT MAKES ARISTA'S SWITCHES OPTIMIZED

02:21:26 19 FOR CLOUD NETWORKS?

02:21:29 20 A. WELL, I THINK OUR STATE ORIENTED -- OUR STATE SHARING

02:21:33 21 ARCHITECTURE IN THE SOFTWARE IS VERY IMPORTANT FOR THE

02:21:36 22 STRUCTURE OF OUR SWITCHES.

02:21:37 23 Q. OKAY. AND WE WILL TALK ABOUT THAT. AND DOES THE

02:21:42 24 IMPLEMENTATION OF THE FEATURES THAT YOU DESCRIBED IN SOFTWARE

02:21:46 25 HAVE AN EFFECT ON THE SUCCESS OF THOSE FEATURES?

02:21:50 1 A. ABSOLUTELY. WHEN YOU ARE IMPLEMENTING FEATURES, YOU MAKE  
02:21:56 2 LOTS OF INDIVIDUAL DESIGN DECISIONS ABOUT THE DETAILS OF HOW  
02:22:00 3 THE FEATURES WORK AND FIT TOGETHER WITH FEATURES.  
02:22:03 4 GETTING THOSE DETAILS RIGHT IS REALLY IMPORTANT FOR A  
02:22:05 5 SMOOTH FUNCTIONING WORK.  
02:22:07 6 Q. WHAT ABOUT THE COMBINATION OF FEATURES, DOES THAT HAVE AN  
02:22:10 7 AFFECT ON THE ULTIMATE USEFULNESS OF THE SWITCH?  
02:22:12 8 A. ABSOLUTELY. TAKING JUST ONE OR TWO OF THESE INNOVATIONS  
02:22:17 9 BY ITSELF DOESN'T FUNDAMENTALLY CHANGE THE WAY CLOUD NETWORKS  
02:22:21 10 OPERATORS CAN OPERATE THEIR NETWORKS, IT'S THE COMBINATION OF  
02:22:24 11 THESE FEATURES THAT'S BEEN SO POTENT IN THE MARKETPLACE.  
02:22:27 12 Q. OKAY. THANK YOU.  
02:22:27 13 AND NOW YOU MENTIONED STATE SHARING ARCHITECTURE, I'M  
02:22:32 14 CERTAINLY GOING TO ASK YOU TO EXPLAIN THAT. BUT WHY DON'T WE  
02:22:36 15 DO IT IN PIECES.  
02:22:38 16 AND SO FIRST OF ALL, WHAT WAS THE OLD WAY OF DOING IT THAT  
02:22:43 17 ARISTA DECIDED TO DO SOMETHING DIFFERENT FROM?  
02:22:45 18 A. WELL, ORIGINALLY PEOPLE CONSTRUCTED MONOLITHIC STRUCTURES.  
02:22:51 19 MONOLITHIC SWITCH OPERATING SYSTEMS, MEANING THE SWITCH  
02:22:56 20 OPERATING SYSTEM IS JUST ONE BIG PROGRAM. THESE WERE VERY  
02:22:59 21 ERROR PRONE. THE SMALLEST PROBLEM IN THE SOFTWARE CAUSED THE  
02:23:02 22 WHOLE SWITCH TO CRASH.  
02:23:04 23 SO THEN IN THE SECOND GENERATION SYSTEMS, PEOPLE DIVIDED  
02:23:08 24 THE SOFTWARE UP INTO SEPARATE PROCESSES THAT COORDINATE BY  
02:23:11 25 SENDING MESSAGES TO EACH OTHER, BUT THESE MESSAGE PASSING

02:23:14 1 SYSTEMS NEVER WORKED AS WELL AS PEOPLE HOPED.

02:23:17 2 Q. AND WHAT WAS THE PROBLEM WITH THE MESSAGE PASSING SYSTEMS?

02:23:20 3 A. WELL, MESSAGE PASSING SYSTEM HAS TWO MAIN PROBLEMS.

02:23:24 4 ONE IN RESTART ABILITY, AND ONE IN THE RATE MISMATCH. THE

02:23:29 5 DEADLY ONE IS THE RATE MISMATCH PROBLEM, WHICH IS WHEN ONE

02:23:33 6 PROCESS SENDS MESSAGES FASTER THAN THE RECIPIENT CAN HANDLE

02:23:37 7 THEM, A CUE BUILDS UP OF UNPROCESSED MESSAGES, IT GETS BIGGER

02:23:41 8 AND BIGGER.

02:23:42 9 THE BIGGER IT GETS, THE MORE WONKY THE SYSTEM BEHAVES

02:23:46 10 BECAUSE ONE PART IS RUNNING BEHIND ANOTHER PART.

02:23:48 11 IT CAN ONLY GET SO BIG. AT SOME POINT YOU RUN OUT OF

02:23:52 12 MEMORY AND THEN THE SWITCH CRASHES AND THAT'S THE LEVEL OF

02:23:56 13 RELIABILITY THAT WE NEEDED TO DO BETTER.

02:23:58 14 Q. OKAY. AND WOULD YOU PLEASE EXPLAIN WHAT ARISTA DID WITH

02:24:05 15 RESPECT TO STATE SHARING ARCHITECTURE, AND WE HAVE AN EASEL IF

02:24:10 16 IT WILL HELP YOU. WITH THE COURT'S PERMISSION, YOU CAN COME TO

02:24:12 17 THE EASEL AND DRAW A DIAGRAM.

02:24:24 18 A. WHEN YOU ARE DIVIDING A SWITCH OPERATING SYSTEM UP INTO

02:24:34 19 PROCESSES, WHAT WE DO IN ARISTA'S SOFTWARE, IS WE CREATE A

02:24:41 20 DATABASE PROCESS IN THE MIDDLE.

02:24:43 21 THE DATABASE PROCESS'S JOB IS TO HOLD ALL OF THE STATE OF

02:24:47 22 THE SWITCH. WHICH LINKS ARE UP, WHICH LINKS ARE DOWN, HOW HAS

02:24:52 23 THE SWITCH BEEN CONFIGURED, HOW MANY PACKETS HAVE BEEN RECEIVED

02:24:56 24 ON WHICH PORTS, INFORMATION ABOUT THE SWITCH'S NEIGHBORS IN THE

02:24:59 25 NETWORK AND WHAT ROUTES TO USE FOR WHAT TYPE OF TRAFFIC.

02:25:02 1 ALL OF THAT IS STORED IN THE SYSTEM DATABASE.

02:25:07 2 FOR EXAMPLE, IF WE HAVE ONE PROCESS TO MANAGE THE SWITCH'S

02:25:14 3 HARDWARE, AND ANOTHER PROCESS WHOSE JOB IS TO KEEP ALL OF THE

02:25:24 4 LINK STATUS INDICATORS, THE LITTLE STATUS LIGHTS ON THE FRONT

02:25:27 5 OF THE SWITCH, KEEP THEM THE RIGHT COLOR.

02:25:30 6 THEN WHEN WE DETECT THAT A LINK GOES DOWN HERE, WE WRITE

02:25:36 7 STATE INTO THE SYSTEM DATABASE SAYING THE LINK IS NOW DOWN.

02:25:42 8 THAT STATE UPDATE PROPAGATES TO ALL OF THE OTHER PROCESSES THAT

02:25:46 9 CARE ABOUT LINK STATUS, WHICH MOST DO, AND OUR LED AGENT, FOR

02:25:52 10 EXAMPLE, TURNS OFF THE LINK.

02:25:57 11 THIS MEANS THAT IF ONE OF THESE PROCESSES HAS A PROBLEM,

02:26:00 12 AND EXITS AND RESTARTS, IT CAN RECOVER ITS STATE FROM THE

02:26:04 13 SYSTEM DATABASE.

02:26:05 14 THE OTHER PROCESSES DON'T NEED TO KNOW THAT ANYTHING

02:26:08 15 HAPPENED, BECAUSE TO THEM, IT JUST LOOKS LIKE THE STATE

02:26:12 16 DATABASE IS BEING UPDATED A LITTLE MORE SLOWLY THAN YOU RECALL,

02:26:15 17 SO IT SOLVES THE PROBLEM OF COORDINATING THESE PROCESSES

02:26:20 18 WITHOUT INTRODUCING THE PROBLEMS OF MESSAGE PASSING.

02:26:23 19 Q. THANK YOU, MR. DUDA. YOU MAY RETURN TO THE STAND.

02:26:30 20 WHAT IS THE PRACTICAL RESULT OF THIS ARCHITECTURE THAT

02:26:33 21 YOU'VE DESCRIBED FOR ARISTA'S CUSTOMERS?

02:26:36 22 A. IT MEANS THAT OUR SWITCHES ARE MORE RELIABLE. IT GIVES --

02:26:41 23 CREATES A FRAMEWORK IN WHICH CUSTOMERS CAN ADD THEIR OWN

02:26:44 24 SOFTWARE, AND IT HELPS US CREATE FEATURES MORE QUICKLY AS WELL.

02:26:47 25 Q. HOW DOES IT HELP ARISTA CREATE FEATURES MORE QUICKLY?

02:26:53 1 A. WELL, WHEN YOU'RE ABLE TO CREATE A NEW FEATURE AS A  
02:26:58 2 STAND-ALONE PROCESS, YOU CAN DEVELOP YOUR FEATURE IN ISOLATION  
02:27:01 3 WITHOUT WORRYING ABOUT THE REST OF THE SOFTWARE ON THE DEVICE.  
02:27:05 4 AND IT ALSO CREATES A BETTER WAY TO TEST YOUR FEATURE. YOU CAN  
02:27:08 5 TEST THAT ONE FEATURE IN ISOLATION OF ALL THE OTHER PROCESSES  
02:27:12 6 ON THE DEVICE.  
02:27:14 7 IN THE ALTERNATIVE, IF YOUR FEATURE IS PART OF A LARGE  
02:27:16 8 PROGRAM, THEN YOU NEED TO COMPILE THAT LARGE PROGRAM AND  
02:27:21 9 DOWNLOAD IT ON TO A SWITCH, IT'S MUCH MORE CUMBERSOME.  
02:27:24 10 Q. I SEE. AND HOW DOES THAT -- WHAT DOES THAT HELP ARISTA  
02:27:29 11 DO?  
02:27:30 12 A. WELL, IT HELPS US DELIVER MORE FEATURES MORE QUICKLY TO  
02:27:35 13 OUR CUSTOMERS WHICH HELPS US ADDRESS MORE OF THEIR USE CASES  
02:27:39 14 AND THEIR NEEDS FOR NETWORK DEVICES.  
02:27:41 15 Q. OKAY. I WANT TO ASK YOU ABOUT A DIFFERENT TOPIC NOW.  
02:27:44 16 DOES ARISTA'S EOS USE SOMETHING CALLED LINUX?  
02:27:48 17 A. YES.  
02:27:48 18 Q. AND WHAT IS LINUX?  
02:27:51 19 A. LINUX IS AN OPEN SOURCE SERVER OPERATING SYSTEM WIDELY  
02:27:55 20 USED BY CLOUD COMPUTING COMPANIES.  
02:27:58 21 Q. AND WHAT IS AN OPERATING SYSTEM?  
02:27:59 22 A. AN OPERATING SYSTEM IS THE LOWEST LEVEL SOFTWARE ON A  
02:28:04 23 COMPUTER THAT MANAGES THE MOST BASIC FUNCTIONS OF THE COMPUTER.  
02:28:08 24 ITS PROCESSOR, ITS MEMORY, AND ITS INPUT, OUTPUT DEVICES.  
02:28:13 25 Q. ISN'T EOS ITSELF AN OPERATING SYSTEM?

02:28:16 1 A. EOS IS A NETWORK OPERATING SYSTEM THAT PERFORMS THOSE  
02:28:20 2 BASIC FUNCTIONS. BUT IN ADDITION, IT COMMUNICATES WITH OTHER  
02:28:28 3 THE DEVICES ON THE NETWORK AND ESTABLISHES COMMUNICATION PATHS  
02:28:31 4 THROUGH THE NETWORK.

02:28:31 5 Q. SO HOW DOES ARISTA USE LINUX IN ITS EOS OPERATING SYSTEM?

02:28:35 6 A. EOS INCORPORATES LINUX. WE BUILD ON LINUX AS THE  
02:28:40 7 FOUNDATION. LINUX MANAGES THE BASIC SYSTEM HARDWARE AND THEN  
02:28:43 8 THE SOFTWARE WE ADD MANAGES THE NETWORKING RELATED FUNCTIONS.

02:28:50 9 Q. OKAY. AND HOW IS THAT DESIGN DIFFERENT FROM THE  
02:28:56 10 TRADITIONAL SWITCH OPERATING SYSTEM DESIGNS?

02:28:58 11 A. FIRST GENERATION OF SWITCH OPERATING SYSTEMS WERE  
02:29:01 12 MONOLITHIC, ONE BIG PROGRAM WITH NO OPERATING SYSTEM KERNEL AT  
02:29:05 13 ALL. AND THESE PROVED TO BE VERY ERROR PRONE, AS I MENTIONED.

02:29:08 14 SECOND GENERATION OPERATING SYSTEMS WERE BASED ON SOME  
02:29:11 15 KIND OF AN OPERATING SYSTEM KERNEL, BUT KEPT IT CLOSED. KERNEL  
02:29:18 16 WAS TYPICALLY PROPRIETARY AND THEY DIDN'T ALLOW ANY THIRD PARTY  
02:29:22 17 SOFTWARE TO BE INSTALLED INTO THE SWITCH ENVIRONMENT.

02:29:25 18 Q. WERE YOU PERSONALLY INVOLVED IN THE DECISION TO USE LINUX  
02:29:29 19 IN EOS?

02:29:30 20 A. YES.

02:29:31 21 Q. AND AT THE TIME THAT YOU MADE THAT DECISION, WERE THERE  
02:29:34 22 OTHER ETHERNET SWITCH VENDORS WHO ALSO BASED THEIR SWITCH  
02:29:39 23 OPERATING SYSTEM ON LINUX?

02:29:40 24 A. NONE THAT WE KNEW OF AT THAT TIME.

02:29:43 25 Q. TO YOUR KNOWLEDGE, IS THERE ANY SWITCH VENDOR TODAY WHO

02:29:47 1 IMPLEMENTS LINUX IN THEIR OPERATING SYSTEM THE WAY THAT ARISTA  
02:29:50 2 DOES?  
02:29:51 3 A. I THINK THERE ARE OTHERS THAT USE LINUX IN SOME FORM, BUT  
02:29:55 4 THEY HAVEN'T INCORPORATED IT IN THE SAME WAY WE HAVE AND  
02:29:59 5 EXPOSED IT TO CUSTOMERS THE SAME WAY WE HAVE.  
02:30:01 6 Q. AND PLEASE EXPLAIN WHAT YOU MEAN BY THAT TO THE JURY?  
02:30:05 7 A. WELL, ONE OF THE KEY DECISIONS WE MADE EARLY ON WAS TO  
02:30:10 8 OPEN OUR OPERATING SYSTEM, TO MAKE IT ACCESSIBLE TO OUR  
02:30:13 9 CUSTOMERS, TO ENABLE OUR CUSTOMERS TO ADD THEIR OWN SOFTWARE TO  
02:30:17 10 THE PRODUCT. AND AS FAR AS I KNOW, WE ARE THE ONLY COMPANY  
02:30:19 11 THAT DOES THAT TODAY.  
02:30:20 12 Q. AND WHAT DIFFERENCE DOES THAT MAKE FOR ARISTA'S CUSTOMERS?  
02:30:24 13 A. WELL, FOR MOST TRADITIONAL ENTERPRISE CUSTOMERS, NO  
02:30:27 14 DIFFERENCE AT ALL. THE BIG BANKS AND INSURANCE COMPANIES HAVE  
02:30:31 15 NO INTEREST IN CREATING THEIR OWN SOFTWARE FOR NETWORK  
02:30:34 16 SWITCHES.  
02:30:35 17 BUT AGAIN, THE CLOUD CUSTOMERS, WHO HAVE A LOT OF  
02:30:38 18 PROGRAMMERS ON STAFF, ARE ABLE TO TAKE ADVANTAGE OF THE  
02:30:43 19 PROGRAMMABILITY OF OUR PLATFORM, THE EXTENSIBILITY AFFORDED BY  
02:30:48 20 KEEPING THE LINUX ENVIRONMENT OPEN AND ADD THEIR OWN SOFTWARE  
02:30:51 21 THAT ENHANCES THE WAY THEIR NETWORK WORKS.  
02:30:54 22 Q. DOES USING LINUX ALSO HELP ARISTA DEVELOP NEW FEATURES?  
02:30:58 23 A. YES, IT DOES.  
02:30:59 24 Q. IN WHAT WAY?  
02:31:01 25 A. OUR INTERNAL SERVERS RUN LINUX AS WELL. THE SAME LINUX

02:31:05 1 VARIANT RUNNING ON OUR SWITCHES. THAT ENABLES OUR ENGINEERS TO  
02:31:09 2 DEVELOP SOFTWARE MORE EFFICIENTLY BECAUSE THEY DON'T NEED TO  
02:31:14 3 COMPILE A LARGE IMAGE AND PUT IT ON TO A SWITCH.  
02:31:18 4 Q. AND CAN YOU EXPLAIN THAT A LITTLE FURTHER, WHAT'S THE  
02:31:21 5 DIFFERENCE BETWEEN DEVELOPING SOFTWARE IN A LINUX ENVIRONMENT  
02:31:24 6 FOR A LINUX SWITCH VERSUS DEVELOPING IT IN SOME OTHER  
02:31:27 7 ENVIRONMENT?  
02:31:28 8 A. RIGHT. THE ADVANTAGE IS AS AN ENGINEER, THE TRADITIONAL  
02:31:34 9 PROCESS, YOU ARE MAYBE CHANGING 50, 100, 200 LINES OF CODE.  
02:31:40 10 YOU MAKE YOUR CHANGES. YOU HAVE TO COMPILE THE ENTIRE  
02:31:44 11 OPERATING SYSTEM IN ORDER TO LOAD IT ON TO A SWITCH WHICH CAN  
02:31:47 12 TAKE SEVERAL MINUTES TO SEE ANY EFFECT OF YOUR CHANGE.  
02:31:50 13 AND IF YOU MADE A SMALL MISTAKE, YOU HAVE TO REPEAT THE  
02:31:53 14 PROCESS AGAIN AND YOU REALLY GET SLOWED DOWN.  
02:31:56 15 WHEREAS IN A LINUX ENVIRONMENT, AT ARISTA, OUR ENGINEERS  
02:32:00 16 CAN MAKE THE CHANGES ON THEIR OWN DEVELOPMENT SERVER. AND THEN  
02:32:05 17 COMPILE JUST THE PART THEY ARE WORKING ON AND RUN JUST THAT  
02:32:08 18 PART RIGHT THERE ON THAT SAME SERVER.  
02:32:11 19 AND I KNOW IT DOESN'T SOUND LIKE MUCH, BUT IT CAN SAVE A  
02:32:14 20 TREMENDOUS AMOUNT OF TIME.  
02:32:16 21 Q. OKAY. YOU MENTIONED PROGRAMMABILITY SOME, AND I WANT TO  
02:32:23 22 TALK TO YOU ABOUT THAT.  
02:32:25 23 FIRST OF ALL, WE HAVE BEEN TALKING ABOUT EOS. WHAT DOES  
02:32:28 24 THE E STAND FOR IN EOS?  
02:32:30 25 A. E STANDS FOR EXTENSIBLE.

02:32:32 1 Q. OKAY. AND IN WHAT WAY IS EOS EXTENSIBLE?

02:32:39 2 A. IT'S EXTENSIBLE IN THE WAY THAT WE ALLOW OUR CUSTOMERS TO

02:32:45 3 ADD SOFTWARE TO OUR SWITCHES.

02:32:47 4 AND I STILL REMEMBER THE AFTERNOON I WAS WALKING DOWN THE

02:32:51 5 STAIRS FROM OUR FIRST DEVELOPMENT OFFICE, WHICH WAS OUT MY

02:32:54 6 BEDROOM DOOR DOWN THE HALL TO THE LEFT, AND WE REALIZED IT

02:32:58 7 WOULD BE SO MUCH EASIER TO ADD SOFTWARE TO OUR SWITCH THAN ANY

02:33:00 8 SWITCH PRODUCT WE HAD SEEN BEFORE. WHY SHOULD WE BE THE ONLY

02:33:03 9 ONES DOING THIS, WHY NOT LEAVE IT OPEN TO ALL SORTS OF

02:33:08 10 DEVELOPERS.

02:33:08 11 Q. BUT WHY WOULD AN ARISTA CUSTOMER WANT TO ADD THEIR OWN

02:33:12 12 SOFTWARE TO AN ARISTA SWITCH?

02:33:13 13 A. WELL, IT'S A LITTLE BIT LIKE THE ORIGINAL IPHONE WAS

02:33:18 14 ACTUALLY A CLOSED SYSTEM. MAYBE MOST PEOPLE DON'T REMEMBER

02:33:21 15 THIS, BUT ORIGINALLY ALL IOS APPS CAME FROM APPLE. AND ONLY

02:33:27 16 LATER DID APPLE DECIDE TO OPEN UP THE IPHONE TO THIRD PARTY

02:33:32 17 DEVELOPMENT AND THE APP STORE.

02:33:33 18 AND YOU CAN SEE HOW THAT CHANGED THE WORLD WITH ALL THE

02:33:36 19 FUNCTIONS AND THE HUNDREDS OF THOUSANDS OF APPS THAT ARE NOW

02:33:40 20 AVAILABLE.

02:33:40 21 Q. AND IN THE CASE OF A NETWORK, AND SPECIFICALLY A CLOUD

02:33:45 22 NETWORK, WHAT WOULD A CUSTOMER WANT TO DO WITH AN APP THAT THE

02:33:48 23 CUSTOMER -- OR APPLICATION THAT THE CUSTOMER MIGHT WRITE AND

02:33:52 24 PUT ON TO AN ARISTA SWITCH?

02:33:53 25 A. THE CUSTOMER GAINS BETTER CONTROL OVER HOW THE SWITCH

02:33:57 1 WORKS. AND THIS IS VERY IMPORTANT FOR DELIVERING THE BEST  
02:34:03 2 SERVICE TO THEIR END USERS, THEY NEED TO CONTROL THE FLOWS OF  
02:34:07 3 PACKET TRAFFIC, WHICH TUNNELS AND PATHS THEY TAKE BETWEEN THE  
02:34:12 4 DATA CENTERS OF THE CLOUD OPERATOR, BUT ALSO, THEY NEED TO  
02:34:15 5 CONTROL HOW THE TRAFFIC MAKES IT FROM THE CLOUD OPERATOR'S DATA  
02:34:19 6 CENTER TO THE CARRIER'S HANDOFF POINT, WHETHER THAT'S AT&T OR  
02:34:24 7 VERIZON OR COMCAST OR TIME WARNER, AND BY PUTTING THEIR OWN  
02:34:28 8 SOFTWARE ON OUR SWITCHES, THEY CAN GET THAT CONTROL.  
02:34:31 9 Q. AND WHY IS IT THAT THEY NEED TO CONTROL THOSE PATHS?  
02:34:36 10 A. TO PROVIDE THE BEST QUALITY EXPERIENCE FOR THEIR END  
02:34:39 11 CUSTOMER.  
02:34:39 12 STANDARD ROUTING ELEMENTS DON'T NECESSARILY PICK THE VERY  
02:34:43 13 FASTEST PATH TO GET THAT WEB RESPONSE FROM THE CLOUD SERVER TO  
02:34:50 14 THE END CUSTOMER. THEY MAKE DECISIONS THAT ARE BASED ON THE  
02:34:56 15 COMPANY BOUNDARIES, ADMINISTRATIVE BOUNDARIES, PROPERTIES OF  
02:34:58 16 THE NETWORK THAT DON'T REALLY MATTER FOR PERFORMANCE.  
02:35:02 17 BY REPLACING THE STANDARD ALGORITHMS WITH THE CLOUD  
02:35:05 18 PROVIDER'S CUSTOMIZED ALGORITHM, THEY CAN PROVIDE BETTER  
02:35:09 19 QUALITY OF SERVICE.  
02:35:09 20 Q. AND CAN YOU EXPLAIN HOW IS IT THAT ARISTA'S SWITCHES ALLOW  
02:35:15 21 CLOUD NETWORK OPERATORS TO GAIN THAT CONTROL?  
02:35:18 22 A. WE LEFT THEM OPEN. AN OPERATOR CAN LOG INTO OUR SWITCH  
02:35:24 23 AND INSTALL THEIR OWN SOFTWARE. WE PROVIDE A SOFTWARE  
02:35:28 24 DEVELOPMENT KIT SO THAT THE CLOUD OPERATOR CAN CREATE THEIR OWN  
02:35:31 25 SOFTWARE, TEST IT IN THEIR OWN ENVIRONMENT, AND THEN DEPLOY IT

02:35:35 1 ON TO OUR SWITCHES.

02:35:36 2 Q. AND WHAT ULTIMATE BENEFIT DOES THAT PROVIDE TO THE

02:35:39 3 CUSTOMER?

02:35:39 4 A. IT GIVES THEM THAT CONTROL OVER THE WAY THEIR NETWORK

02:35:43 5 OPERATES. OPERATING A SCALE OF THEIR APP, THAT CONTROL IS VERY

02:35:47 6 IMPORTANT.

02:35:48 7 Q. DOES ARISTA ALSO USE A FEATURE CALLED EAPI?

02:35:53 8 A. YES.

02:35:53 9 Q. AND WHAT IS EAPI?

02:35:56 10 A. EAPI IS AN AUTOMATION INTERFACE, SO THAT CUSTOMER SOFTWARE

02:36:02 11 RUNNING OFF THE SWITCH CAN MONITOR AND CONFIGURE THE SWITCH.

02:36:06 12 Q. WERE YOU PERSONALLY INVOLVED IN DESIGNING EAPI?

02:36:11 13 A. YES.

02:36:11 14 Q. AND WHY DID YOU WANT TO DO IT?

02:36:13 15 A. WE KNEW THAT OUR CLOUD COMPANY CUSTOMERS WERE OPERATING

02:36:18 16 HUGE NETWORKS AND NEEDED BETTER TOOLS TO CONTROL THOSE

02:36:22 17 SWITCHES. THE STATE OF THE ART WAS CALLED SCREEN SCRAPING, AND

02:36:26 18 IT WAS NOT REALLY ADEQUATE.

02:36:28 19 Q. DOES EAPI USE CLI COMMANDS?

02:36:32 20 A. THE CLI COMMANDS ARE IN THERE, YES, THEY ARE UNDER THE

02:36:38 21 COVERS AND ONLY ISSUED BY COMPUTERS, WHEREAS THE CLI, OF

02:36:41 22 COURSE, WAS DESIGNED TO BE ISSUED BY HUMANS.

02:36:43 23 Q. AND IN WHAT FORM DOES, ARE THE CLI COMMANDS USED IN THE

02:36:50 24 EAPI?

02:36:51 25 A. THEY ARE ENCAPSULATED IN A FORMAT CALLED JSON, WHICH IS A

02:36:57 1 FORMAT DESIGNED TO BE EASILY GENERATED AND RECOGNIZED BY  
02:37:02 2 COMPUTERS.

02:37:04 3 Q. AND WHY DID YOU USE A JSON ENCAPSULATION OF CLI COMMANDS  
02:37:11 4 IN EAPI?

02:37:13 5 A. WELL, WE WANTED TO CREATE A WAY FOR OUR CUSTOMERS TO  
02:37:19 6 AUTOMATE EVERY ASPECT OF THE SWITCH. AND WE ALREADY HAD THE  
02:37:23 7 CLI.

02:37:23 8 THINK OF THE CLI AS BEING CONTROL KNOBS. WE ALREADY HAD  
02:37:28 9 ALL THE KNOBS, AND EAPI GIVES CUSTOMERS A BETTER WAY TO GET  
02:37:32 10 COMPUTERS TO TURN THE KNOBS THAT ALREADY EXIST IN THE CLI.

02:37:35 11 Q. AND WHAT IS IT THAT EAPI ALLOWS ARISTA CUSTOMERS TO DO  
02:37:41 12 THAT THEY COULDN'T DO WITHOUT IT?

02:37:44 13 A. IT GIVES THEM A VERY CONVENIENT WAY TO AUTOMATE COMMON  
02:37:48 14 ADMINISTRATIVE TASKS SUCH AS UPGRADING SOFTWARE, CHANGING THE  
02:37:52 15 BEHAVIOR OF THE NETWORK BASED ON NEW APPLICATION DEPLOYMENTS OR  
02:37:56 16 SIMPLY MONITORING FOR UNUSUAL EVENTS.

02:37:59 17 Q. DID THERE COME A TIME, MR. DUDA, THAT YOU REALIZED THE  
02:38:06 18 DIFFERENCE BETWEEN ARISTA'S APPROACH FOR SWITCH DESIGN WOULD  
02:38:10 19 MAKE FOR CUSTOMERS?

02:38:11 20 A. YEAH, THERE WAS AN EARLY CUSTOMER CALLED BIT GRAVITY THAT  
02:38:15 21 HAD A PROBLEM IN THEIR NETWORK. WE ASSESSED THAT THEY USE A  
02:38:18 22 STANDARD LINUX TOOL TO DEBUG THE PROBLEM. THEY KNEW ABOUT THE  
02:38:22 23 TOOL BUT THEY WERE CONFUSED BY HOW THAT TOOL COULD BE USED ON A  
02:38:26 24 SWITCH.

02:38:26 25 AND WHEN I SHOWED THE CUSTOMER HOW OUR OPEN LINUX

02:38:30 1 ENVIRONMENT WORKED, THE CUSTOMER WAS SO SURPRISED, HE SWORE AND  
02:38:35 2 THEN PAUSED FOR A MOMENT AND THEN SAID, DO YOU MAKE ONE GIGABIT  
02:38:41 3 SWITCHES? WHICH IS ANOTHER TYPE OF SWITCH THAT UNFORTUNATELY  
02:38:43 4 WE DIDN'T MAKE AT THE TIME.

02:38:44 5 Q. OKAY.

02:38:46 6 MR. SILBERT: THANK YOU, MR. DUDA.

02:38:47 7 I HAVE NOTHING FURTHER.

02:38:48 8 THE COURT: MR. PAK, CROSS-EXAMINATION?

02:38:50 9 MR. PAK: YES.

02:39:03 10 MR. VAN NEST: COULD WE MARK IT AS A DEMONSTRATIVE?

02:39:07 11 THE COURT: SURE.

02:39:08 12 MR. VAN NEST: DEMONSTRATIVE 9075.

02:39:23 13 WE WILL MARK IT, YOUR HONOR, AS DEMONSTRATIVE 9075, AND

02:39:27 14 MR. SILBERT CAN WRITE THAT ON THERE.

02:39:29 15 THE COURT: THANK YOU.

02:39:30 16 (DEFENDANT'S EXHIBIT 9075 WAS MARKED FOR IDENTIFICATION.)

02:39:32 17 **CROSS-EXAMINATION**

02:39:32 18 BY MR. PAK:

02:39:51 19 Q. GOOD TO SEE YOU AGAIN, MR. DUDA.

02:39:52 20 A. GOOD TO SEE YOU.

02:39:53 21 Q. NOW FIRST OF ALL, YOU STILL STAND BY ALL OF THE TESTIMONY

02:39:56 22 THAT YOU HAVE GIVEN IN THIS TRIAL, CORRECT?

02:39:59 23 A. YES, OF COURSE.

02:40:00 24 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA COPIED

02:40:04 25 SOME OF CISCO'S CLI COMMANDS FROM CISCO'S SOURCES AND PUT IT

02:40:09 1 INTO ARISTA PRODUCTS, CORRECT?

02:40:10 2 A. THAT'S RIGHT.

02:40:11 3 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA DECIDED

02:40:15 4 TO EMBRACE CISCO IOS CLI AS THE MODEL FOR ARISTA'S CLI, TRUE?

02:40:22 5 A. THAT'S RIGHT.

02:40:23 6 Q. AND ISN'T IT ALSO TRUE THAT WHEN IT CAME TO COPYING

02:40:27 7 CISCO'S CLI AND PUTTING IT INTO ARISTA SWITCHES, YOU AND OTHERS

02:40:32 8 AT ARISTA MADE THE DECISION NOT TO INNOVATE; ISN'T THAT TRUE?

02:40:35 9 A. WELL, WE DIDN'T COPY THE WHOLE CLI OR ANYTHING CLOSE. AND

02:40:40 10 WE INNOVATED IN MANY WAYS IN OUR CLI.

02:40:43 11 Q. ISN'T IT TRUE, SIR, THAT YOU HAVE SAID IN DOCUMENTS, THAT

02:40:48 12 WHEN IT CAME TO COPYING CISCO'S CLI, THERE IS NO NEED TO

02:40:51 13 INNOVATE; ISN'T THAT TRUE, SIR?

02:40:53 14 A. I PROBABLY SAID SOMETHING LIKE THAT.

02:40:55 15 Q. RIGHT. AND YOU MEANT IT WHEN YOU SAID IT; RIGHT, SIR?

02:40:57 16 A. IN THE SENSE THAT I MEANT IT.

02:41:00 17 Q. AND SIR, IT'S ALSO TRUE THAT WHEN IT CAME TO EAPI THAT YOU

02:41:05 18 TALKED ABOUT, YOU TOLD MR. DOUGLAS GOURLAY AT ARISTA THAT WE

02:41:11 19 SHOULD JUST BLATANTLY COPY CISCO'S EAPI'S; IS THAT A TRUE

02:41:17 20 STATEMENT?

02:41:17 21 A. NO, THAT'S NOT. EAPI IS IN NO WAY A COPY OF CISCO.

02:41:22 22 Q. YOU NEVER TOLD MR. GOURLAY TO COPY BLATANTLY, CISCO'S

02:41:27 23 EAPI, YOU DIDN'T MAKE THAT STATEMENT?

02:41:28 24 A. I DON'T REMEMBER SAYING SOMETHING LIKE THAT. I UNDERSTAND

02:41:31 25 THAT MR. GOURLAY SAID SOMETHING ALONG THE LINES THAT MAYBE I

02:41:34 1 HAD.

02:41:34 2 Q. LET'S TAKE A LOOK AT WHAT THE DOCUMENT SAYS.

02:41:37 3 CAN YOU TAKE A LOOK AT EXHIBIT 187 IN YOUR BINDER, SIR.

02:41:44 4 THIS IS AN E-MAIL THAT WAS SENT BY YOU TO MR. DUG GOURLAY DATED

02:41:51 5 JUNE 13, 2012.

02:41:53 6 MR. PAK: YOUR HONOR, I WOULD LIKE TO ADMIT THIS INTO

02:41:55 7 EVIDENCE.

02:41:56 8 THE COURT: ANY OBJECTION?

02:41:58 9 MR. SILBERT: NO OBJECTION.

02:41:58 10 THE COURT: IT WILL BE ADMITTED.

02:42:00 11 (DEFENDANT'S EXHIBIT 187 WAS ADMITTED INTO EVIDENCE.)

02:42:00 12 BY MR. PAK:

02:42:02 13 Q. AND IF YOU LOOK AT THE VERY TOP, KENNETH DUDA JUNE 13,

02:42:08 14 2012, YOU WROTE THIS E-MAIL TO MR. DOUGLAS GOURLAY IN 2012,

02:42:14 15 CORRECT?

02:42:14 16 A. THAT'S RIGHT.

02:42:14 17 Q. AND YOU SAID THERE IN THE SECOND PARAGRAPH, "I WANT TO

02:42:17 18 BUILD EAPI'S SO BADLY," CORRECT?

02:42:21 19 A. YES, EXACTLY.

02:42:22 20 Q. AND IF YOU SCROLL DOWN, AT THE VERY BOTTOM, WHAT

02:42:31 21 MR. GOURLAY TOLD YOU IN THIS E-MAIL CHAIN IS AT THE VERY

02:42:34 22 BOTTOM, "KEN BROUGHT UP A REALLY GOOD POINT POST ORACLE VERSUS

02:42:38 23 GOOGLE, JUST BLATANTLY COPY CISCO'S API."

02:42:44 24 THAT'S WHAT MR. GOURLAY WROTE IN A HISTORICAL DOCUMENT

02:42:48 25 ABOUT CONVERSATIONS HE WAS HAVING WITH YOU ABOUT THE AP, IGMP,

02:42:52 1 CORRECT?

02:42:52 2 YES OR NO, PLEASE. THAT'S WHAT HE WROTE, ISN'T THAT TRUE?

02:42:56 3 A. THOSE ARE HIS WORDS.

02:43:05 4 Q. WHEN YOU WORKED AT CISCO, DID YOU WORK ON AN OPERATING

02:43:06 5 SYSTEM CALLED IOS XR?

02:43:08 6 A. I DID NOT.

02:43:09 7 Q. OKAY. SO YOU HAD NO IDEA WHAT TYPE OF INNOVATIVE FEATURES

02:43:12 8 WENT INTO CISCO'S IOS XR; ISN'T THAT TRUE?

02:43:14 9 A. I KNOW A LIMITED AMOUNT ABOUT IOS XR.

02:43:17 10 Q. YOU HAVE NO PERSONAL KNOWLEDGE OF DESIGNING ANYTHING THAT

02:43:19 11 WENT INTO IOS XR, CORRECT?

02:43:21 12 A. I DID NOT DESIGN ANYTHING RELATED TO IOS XR.

02:43:24 13 Q. DID YOU KNOW, SIR, BEFORE YOUR TESTIMONY HERE TODAY THAT

02:43:27 14 SYSDB WAS IN IOS XR AS EARLY AS 2000?

02:43:31 15 A. I KNOW THAT CISCO HAS A TECHNOLOGY THAT CISCO CALLS SYSDB.

02:43:37 16 Q. AND YOU KNOW THAT THAT WAS ADDED TO THE IOS XR OPERATING

02:43:41 17 SYSTEM IN THE EARLY 2000'S BY CISCO; YOU KNOW THAT, RIGHT?

02:43:44 18 A. I DON'T KNOW WHEN CISCO ADDED SYSDB TO IOS XR.

02:43:49 19 Q. YOU ARE NOT DISPUTING THAT, ARE YOU?

02:43:51 20 A. NO.

02:43:51 21 Q. AND YOU ALSO UNDERSTAND THAT IOS XR FROM CISCO HAS

02:43:54 22 RELIABILITY, MODULAR DESIGN AND SELF HEALING FEATURES; YOU

02:44:00 23 UNDERSTAND THAT, CORRECT?

02:44:00 24 A. I DON'T KNOW ABOUT IOS XR FEATURES.

02:44:02 25 Q. YOU HAVE NO REASON TO DISPUTE ABOUT OF THOSE CLAIMS BY

02:44:05 1 CISCO, CORRECT?

02:44:05 2 A. NO.

02:44:09 3 Q. BUT YOU DO KNOW, SIR, THAT BEFORE YOU STARTED WORK ON

02:44:13 4 SYSDB, THAT CISCO HAD A PATENT ON SYSDB BEFORE ARISTA'S WORK ON

02:44:18 5 THAT TECHNOLOGY, TRUE?

02:44:20 6 A. NO, WE HAD NO KNOWLEDGE OF CISCO'S PATENTS.

02:44:22 7 Q. YOU KNOW -- YOU TESTIFIED EARLIER IN THIS CASE THAT YOU

02:44:26 8 KNOW THAT CISCO HAS PATENTS ON SYSDB TECHNOLOGY, CORRECT? YOU

02:44:29 9 STILL STAND BY THAT TESTIMONY?

02:44:30 10 A. I KNOW TODAY THAT CISCO HAS A PATENT ON SOMETHING CALLED

02:44:34 11 SYSDB, BUT I DID NOT KNOW THAT WHEN WE WERE WORKING ON OUR

02:44:38 12 SYSDB.

02:44:39 13 MR. PAK: THANK YOU, YOUR HONOR.

02:44:40 14 THAT'S ALL I HAVE.

02:44:41 15 THE COURT: ANYTHING ELSE, MR. SILBERT?

02:44:41 16 **REDIRECT EXAMINATION**

02:44:44 17 MR. SILBERT:

02:44:44 18 Q. VERY BRIEFLY, YOUR HONOR. THANK YOU.

02:44:48 19 MR. DUDA, COULD YOU EXPLAIN WHY YOU SAID WORDS TO THE

02:44:52 20 EFFECT THAT THERE'S NO NEED TO INNOVATE WITH RESPECT TO CLI

02:44:58 21 COMMANDS.

02:44:58 22 A. SURE. WHAT WE WERE FOCUSED ON THERE IS THE COMMANDS

02:45:01 23 THEMSELVES. THESE ARE COMMANDS THAT ARE COMMON THROUGHOUT THE

02:45:04 24 INDUSTRY, THAT OUR CUSTOMERS PARTICULARLY ON THE ENTERPRISE

02:45:07 25 SIDE, ALREADY KNOW AND ARE FAMILIAR WITH. AND THERE'S NO

02:45:12 1 REASON TO CHANGE THEM JUST FOR THE SAKE OF CHANGING THEM.

02:45:14 2 PEOPLE ARE USED TO THEM.

02:45:16 3 LOTS OF DIFFERENT DEVICES ACCEPT THEM, AND WE SHOULD

02:45:20 4 SIMPLY ACCEPT THE SAME COMMANDS.

02:45:22 5 Q. REFERRING TO THE TECHNOLOGY OF THE CLI ITSELF, SEPARATE

02:45:26 6 FROM THE COMMANDS, HAS ARISTA INNOVATED IN THAT AREA?

02:45:30 7 A. WE HAVE SEVERAL INNOVATIONS IN THE CLI. IT'S WRITTEN IN

02:45:33 8 THE LANGUAGE CALLED PYTHON THAT MAKES IT EASIER TO ADD NEW

02:45:41 9 COMMANDS. IT PROVIDES ACCESS TO DIRECT TO UNIX PIPES, GIVES

02:45:44 10 OUR CUSTOMERS MORE WAYS TO PROCESS THE OUTPUT OF COMMANDS.

02:45:45 11 THERE ARE SEVERAL OTHER INNOVATIONS AS WELL.

02:45:50 12 Q. OKAY. MR. PAK SHOWED YOU EXHIBIT 187, THE E-MAIL FROM

02:45:56 13 MR. GOURLAY SAYING THAT YOU SAID SOMETHING ABOUT, WHY NOT JUST

02:45:59 14 BLATANTLY COPY CISCO'S API'S. DO YOU RECALL HIM DISCUSSING

02:46:04 15 THAT EXHIBIT WITH YOU?

02:46:04 16 A. YES.

02:46:05 17 Q. IS EAPI, IN ANY WAY, A COPY OF CISCO'S API'S?

02:46:12 18 A. ABSOLUTELY NOT. EAPI IS OUR OWN INVENTION.

02:46:16 19 Q. IN WHAT WAY? CAN YOU JUST EXPLAIN IN WHAT WAY IS IT

02:46:19 20 DIFFERENT?

02:46:20 21 A. WELL, IT WAS A NEW INVENTION AT THE TIME, IT WAS DIFFERENT

02:46:23 22 FROM ANY EXISTING API THAT I'M AWARE OF IN THE WAY THAT IT

02:46:28 23 ENCAPSULATES THE EXISTING CLI COMMANDS IN JSON PACKAGING THAT

02:46:36 24 MAKES THOSE COMMANDS EASY TO THE COMPUTERS TO ISSUE AND MAKES

02:46:40 25 THE COMMAND RESPONSES EASIER FOR THE COMPUTERS TO INTERPRET.

02:46:42 1 OTHER VENDOR'S API'S INTENDED TO BE COMPLETELY NEW  
02:46:45 2 DEFINITIONS THAT REQUIRED ENGINEERS TO LEARN NEW THINGS.  
02:46:48 3 Q. DO YOU HAVE ANY MEMORY OF SAYING THE WORDS TO THE EFFECT  
02:46:51 4 OF, "WE COULD BLATANTLY COPY CISCO'S API'S?"  
02:46:55 5 A. NO, I DON'T.  
02:46:56 6 Q. DO YOU HAVE ANY UNDERSTANDING OF THE CONTEXT IN WHICH YOU  
02:47:00 7 MIGHT HAVE SAID THAT?  
02:47:00 8 A. I REALLY DON'T KNOW, IT'S POSSIBLE I WAS KIDDING AROUND IN  
02:47:05 9 THE CONTEXT OF THE ORACLE V. GOOGLE DECISION, I DON'T KNOW.  
02:47:07 10 Q. OKAY. MR. PAK ASKED YOU SOME QUESTIONS ABOUT IOS XR AND  
02:47:15 11 SYSDB; DO YOU RECALL THAT?  
02:47:17 12 A. YES.  
02:47:17 13 Q. TO YOUR KNOWLEDGE, DOES ANY OTHER ETHERNET SWITCH COMPANY  
02:47:23 14 IMPLEMENT A STATE SHARING ARCHITECTURE THE WAY THAT ARISTA  
02:47:30 15 DOES?  
02:47:30 16 A. NO.  
02:47:31 17 Q. AND WHY DO YOU SAY THAT?  
02:47:33 18 A. WELL, THERE'S CERTAIN DOCUMENTS THAT DESCRIBE HOW THE IOS  
02:47:36 19 XR SYSDB WORKS THAT I'VE LOOKED AT, OBVIOUSLY, AFTER WE BUILT  
02:47:40 20 OUR SYSDB. AND IN THOSE DOCUMENTS, THE WAY THEY DESCRIBE THE  
02:47:46 21 OPERATION OF SYSDB IS ENTIRELY DIFFERENT FROM THE WAY ARISTA'S  
02:47:49 22 SYSDB WORKED, WHICH WE CREATED WITH NO KNOWLEDGE OF THE IOS XR  
02:47:55 23 SYSDB.  
02:47:56 24 Q. AND WITHOUT GOING INTO TOO MUCH DETAIL, CAN YOU EXPLAIN  
02:47:59 25 WHAT ARE SOME OF THE DIFFERENCES THAT YOU'RE REFERRING TO?

02:48:01 1 A. ONE PRINCIPAL DIFFERENCE IS THAT IN XR SYSDB, AS I  
02:48:08 2 UNDERSTAND IT, IS THERE ARE TRANSACTIONS WHERE A PROCESS THAT  
02:48:09 3 WANTS TO READ OR WRITE STATE SENDS A MESSAGE TO THE DATABASE  
02:48:13 4 ASKING TO READ OR WRITE THAT STATE, AND THEN WAITS FOR A  
02:48:15 5 RESPONSE EITHER CONTAINING THE STATE THAT'S BEEN READ OR  
02:48:19 6 CONTAINING AN ACKNOWLEDGEMENT THAT THE RIGHT HAS SUCCEEDED.  
02:48:22 7 OUR DATABASE WORKS COMPLETELY DIFFERENTLY. IN OUR  
02:48:24 8 DATABASE, A PROCESS STARTS BY INDICATING INTEREST IN A BLOCK OF  
02:48:31 9 STATE, AND THEN STREAMS ANY UPDATES TO THAT STATE  
02:48:34 10 ASYNCHRONOUSLY. AND SYSDB, MEANWHILE, STREAMS ANY UPDATES THE  
02:48:38 11 OTHER DIRECTION AS WELL. THERE'S NO READ WRITE RESPONSES AND  
02:48:42 12 REQUESTS.  
02:48:42 13 Q. AND WHAT'S THE CONSEQUENCE OF THAT DIFFERENCE IN DESIGN?  
02:48:45 14 A. I BELIEVE THAT OUR DESIGN PERFORMS BETTER BECAUSE THE  
02:48:51 15 AGENT PROCESSES DON'T NEED TO WAIT FOR THE DATABASE TO PERFORM  
02:48:53 16 THEIR BASIC FUNCTIONS.  
02:48:55 17 MR. VAN NEST: THANK YOU.  
02:48:57 18 NOTHING FURTHER.  
02:48:57 19 THE COURT: MR. PAK, ANYTHING'S ELSE?  
02:48:59 20 MR. PAK: JUST A QUICK QUESTION, YOUR HONOR.  
02:49:03 21 **RECROSS-EXAMINATION**  
02:49:03 22 BY MR. PAK:  
02:49:03 23 Q. YOU ARE NOT DISPUTING THAT CISCO HAD SYSDB IN THEIR  
02:49:07 24 OPERATING SYSTEM BEFORE YOU STARTED WORK ON SYSDB AT ARISTA,  
02:49:10 25 CORRECT? YOU ARE NOT DENYING THAT, ARE YOU?

02:49:13 1 A. THESE ARE DIFFERENT SYSDB'S. THERE'S -- CISCO HAD A  
02:49:17 2 TECHNOLOGY CALLED SYSDB IN ITS PRODUCTS AT SOME TIME BEFORE WE  
02:49:21 3 DELIVERED OUR FIRST PRODUCT.

02:49:22 4 Q. THAT'S RIGHT.

02:49:24 5 AND SIR, YOU HAD NO PERSONAL KNOWLEDGE OF HOW IOS XR  
02:49:27 6 WORKED UNTIL YOUR TESTIMONY YOU JUST GAVE TODAY, CORRECT?

02:49:29 7 A. THAT'S RIGHT.

02:49:30 8 MR. PAK: OKAY. THANK YOU.

02:49:32 9 THE COURT: IS THAT EVERYTHING FOR THIS WITNESS?

02:49:34 10 MR. PAK: YOUR HONOR, I THINK I WOULD LIKE TO  
02:49:36 11 ACTUALLY MOVE TO STRIKE HIS RESPONSES ON IOS XR BASED ON HIS  
02:49:40 12 LACK OF PERSONAL KNOWLEDGE. I THINK HE JUST TESTIFIED THAT HE  
02:49:42 13 HAD NO PERSONAL KNOWLEDGE.

02:49:44 14 THE COURT: WELL, LET ME FIGURE OUT WHERE THAT IS, IS  
02:49:47 15 THAT THE ANSWER HE JUST GAVE?

02:49:48 16 MR. PAK: HE GAVE A FAIRLY LENGTHY ANSWER RIGHT AT  
02:49:51 17 THE END OF MR. SILBERT'S EXAMINATION.

02:49:53 18 THE COURT: SO YOU WANT ME TO GO BACK?

02:49:54 19 MR. PAK: YES, YOUR HONOR.

02:49:56 20 BUT HE GAVE AN ANSWER THAT WAS WITH RESPECT TO IOS XR, I  
02:49:59 21 JUST ASKED HIM WHETHER HE HAD ANY PERSONAL KNOWLEDGE. HE SAID  
02:50:03 22 HE DID NOT. SO I MOVE TO STRIKE MR. --

02:50:08 23 THE WITNESS: I PROBABLY MISSPOKE BECAUSE --

02:50:10 24 MR. PAK: WE HAVE MR. DUDA'S RESPONSE ON THAT, BUT WE  
02:50:13 25 CAN TAKE THAT UP AT A LATER TIME IF YOUR HONOR WOULD LIKE.

02:50:15 1 THE COURT: I'M CONFUSED ABOUT WHAT YOU WANT TO  
02:50:17 2 STRIKE, I'M SORRY.  
02:50:18 3 MR. PAK: YOUR HONOR, LET ME SAVE MY OBJECTION UNTIL  
02:50:21 4 ANOTHER TIME.  
02:50:21 5 THANK YOU.  
02:50:21 6 THE COURT: I APPRECIATE THAT.  
02:50:23 7 MR. SILBERT, ANYTHING FURTHER FOR THIS WITNESS?  
02:50:26 8 MR. SILBERT: NO, YOUR HONOR.  
02:50:29 9 MR. VAN NEST: MAY I STICK THIS STICKER ON HERE,  
02:50:32 10 YOUR HONOR?  
02:50:33 11 THE COURT: SURE, I APPRECIATE THAT. THAT'S HELPFUL.  
02:50:35 12 MR. VAN NEST: WE WILL STAPLE IT BETTER, BUT HERE WE  
02:50:38 13 GO.  
02:50:38 14 THE COURT: IT WILL DO FOR NOW.  
02:50:40 15 I THINK WE ARE GOING TO TAKE A BREAK BEFORE THE NEXT  
02:50:42 16 WITNESS, IF THAT'S ALL RIGHT.  
02:50:43 17 MR. DUDA, YOU MAY STEP DOWN.  
02:50:45 18 ALL RIGHT. LET'S TAKE A TEN-MINUTE BREAK AND WE WILL COME  
02:50:48 19 BACK AT 3:00.  
02:50:50 20 (RECESS FROM 2:50 P.M. UNTIL 3:01 P.M.)  
03:03:12 21 THE COURT: OUR JURY IS BACK. MR. FERRALL, DO YOU  
03:03:15 22 HAVE THE NEXT WITNESS?  
03:03:17 23 MR. FERRALL: I DO, YOUR HONOR. THANK YOU.  
03:03:19 24 ARISTA NETWORKS CALLS HUGH HOLBROOK AS ITS NEXT WITNESS.  
03:03:23 25 THE COURT: OKAY.

03:03:30 1 AND MR. HOLBROOK, IF YOU WOULD COME FORWARD TO THE WITNESS

03:03:36 2 STAND, PLEASE, AND STAND TO BE SWORN.

03:03:45 3 **(DEFENDANT'S WITNESS, HUGH HOLBROOK, WAS SWORN.)**

03:03:52 4 THE WITNESS: YES.

03:03:58 5 THE CLERK: AND IF YOU WOULD PLEASE STATE YOUR NAME

03:04:01 6 AND SPELL YOUR LAST NAME FOR THE RECORD.

03:04:03 7 THE WITNESS: HUGH HOLBROOK. H-O-L-B-R-O-O-K.

03:04:08 8 **DIRECT EXAMINATION**

03:04:08 9 BY MR. FERRALL:

03:04:12 10 Q. GOOD AFTERNOON, MR. HOLBROOK.

03:04:13 11 A. GOOD AFTERNOON.

03:04:14 12 Q. DO YOU HAVE A BINDER THERE OF SOME EXHIBITS WE WILL TALK

03:04:17 13 ABOUT?

03:04:17 14 A. I DON'T.

03:04:19 15 Q. OH, PARDON ME. THAT'S NOT FAIR.

03:04:31 16 MR. HOLBROOK, PLEASE INTRODUCE YOURSELF TO THE JURY.

03:04:35 17 A. HI, MY NAME IS HUGH HOLBROOK.

03:04:38 18 Q. TELL US A LITTLE BIT ABOUT YOURSELF, YOUR FAMILY.

03:04:41 19 A. I GREW UP IN MINNESOTA. MY FAMILY STILL LIVES THERE. MY

03:04:48 20 PARENTS DO. MY SISTER LIVES IN MINNESOTA. MY BROTHER LIVES IN

03:04:52 21 MOUNTAIN VIEW.

03:04:52 22 I'VE GOT THREE KIDS, A SEVENTH GRADER AND AN EIGHTH GRADER

03:04:56 23 AND A FIRST GRADER. AND I SPEND MOST OF MY FREE TIME WITH MY

03:05:02 24 KIDS. I REFEREE SOCCER GAMES.

03:05:06 25 Q. YOU ARE CURRENTLY AT ARISTA?

03:05:08 1 A. YES, I AM.

03:05:09 2 Q. WHAT'S YOUR POSITION AT ARISTA?

03:05:10 3 A. I'M THE VICE PRESIDENT OF SOFTWARE ENGINEERING.

03:05:13 4 Q. WHAT ARE YOU RESPONSIBLE FOR AT ARISTA?

03:05:16 5 A. I'M RESPONSIBLE FOR ABOUT HALF OF THE SOFTWARE TEAM. SO

03:05:20 6 IT'S THE PART OF THE TEAM THAT WRITES SOFTWARE THAT IS KIND OF

03:05:27 7 CLOSER TO HARDWARE. MOSTLY, NOT ENTIRELY, BUT THAT'S MOSTLY

03:05:31 8 IT.

03:05:31 9 Q. HOW LONG HAVE YOU BEEN WITH ARISTA?

03:05:33 10 A. I HAVE BEEN AT ARISTA SINCE THE BEGINNING OF JANUARY OF

03:05:37 11 2005, SO ALMOST 12 YEARS.

03:05:39 12 Q. AND CAN YOU PROVIDE AN OVERVIEW OF YOUR EDUCATIONAL

03:05:44 13 EXPERIENCE.

03:05:45 14 A. WELL, LIKE I SAID, I WENT TO HIGH SCHOOL IN MINNESOTA AND

03:05:49 15 THEN I CAME TO CALIFORNIA FOR COLLEGE. AND I GOT A BACHELOR'S,

03:05:54 16 MASTER'S AND PH.D. FROM STANFORD UNIVERSITY. COMPLETING MY

03:05:59 17 PH.D. IN 2001.

03:06:01 18 Q. AND WHAT WAS YOUR -- WHAT WERE YOUR DEGREES IN?

03:06:05 19 A. ALL THREE OF MY DEGREES WERE IN COMPUTER SCIENCE.

03:06:07 20 Q. CAN YOU BRIEFLY TELL US WHAT YOU DID PROFESSIONALLY BEFORE

03:06:11 21 YOU CAME TO ARISTA?

03:06:13 22 A. WELL, I HAD A HANDFUL OF SUMMER JOBS. I WORKED AT TANDEM

03:06:19 23 COMPUTER, I WORKED AT A VIDEO GAME COMPANY DOING VIDEO GAMES

03:06:22 24 FOR THE SEGA GENESIS, AND THEN I WORKED AT CISCO BEFORE COMING

03:06:26 25 TO ARISTA.

03:06:26 1 Q. HOW LONG DID YOU WORK AT CISCO BEFORE ARISTA?

03:06:28 2 A. I THINK IT WAS ABOUT EIGHT YEARS.

03:06:30 3 Q. HAVE YOU EVER WORKED WITH ANY STANDARDS ORGANIZATIONS?

03:06:35 4 A. YES, I HAVE.

03:06:36 5 Q. WHICH ONES?

03:06:37 6 A. SO I WORKED WITH THE INTERNET ENGINEERING TASK FORCE, THE

03:06:43 7 IETF, IT'S THE ORGANIZATION THAT KIND OF DEFINES THE STANDARDS

03:06:47 8 FOR THE INTERNET, FOR THE MOST PART.

03:06:49 9 Q. CAN YOU EXPLAIN HOW YOU GOT INVOLVED WITH THE IETF,

03:06:52 10 PLEASE?

03:06:52 11 A. WELL, IT WAS KIND OF A CONTINUATION OF THE WORK I DID ON

03:06:57 12 MY PH.D. DISSERTATION. SO MY WORK IN MY PH.D. WAS ON SOMETHING

03:07:03 13 CALLED MULTICAST, AND I ENDED UP STANDARDIZING THAT INSIDE THE

03:07:08 14 IETF.

03:07:08 15 Q. CAN YOU TELL US IN HIGH LEVEL TERMS, IF YOU WILL, WHAT

03:07:13 16 THE -- WHAT YOUR FOCUS WAS ON MULTICAST WITH IETF?

03:07:18 17 A. WELL, SO MULTICAST IS A TECHNOLOGY THAT'S BEEN AROUND

03:07:21 18 SINCE MAYBE THE EARLY 90'S OR LATE 80'S. IT'S SORT OF LIKE

03:07:28 19 RADIO ON THE INTERNET, SO IT'S USED FOR TV DISTRIBUTION, FOR

03:07:32 20 INSTANCE.

03:07:32 21 AND THERE'S ONE TRANSMITTER, AND LOTS OF RECEIVERS CAN

03:07:35 22 TUNE IN TO THE SAME INTERNET STATION, AS IT WERE. AND THE

03:07:41 23 MULTICAST DELIVERS THAT DATA MORE EFFICIENTLY.

03:07:45 24 MY WORK IN THE IETF WAS STANDARDIZING SOMETHING CALLED

03:07:50 25 SOURCE-SPECIFIC MULTICAST, WHICH SOLVED A LOT OF TECHNICAL

03:07:54 1 PROBLEMS THAT MADE MULTICAST DIFFICULT TO USE.

03:07:56 2 Q. IF YOU COULD OPEN UP YOUR BINDER AND LOOK AT EXHIBIT 6923,

03:08:02 3 PLEASE. DO YOU RECOGNIZE THAT?

03:08:09 4 A. I DO.

03:08:10 5 Q. WHAT IS THAT?

03:08:11 6 A. THAT IS A STANDARDS DOCUMENT FROM THE IETF, IT'S ONE THAT

03:08:17 7 I WAS AN AUTHOR ON.

03:08:19 8 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 6923

03:08:22 9 INTO EVIDENCE.

03:08:22 10 MR. NELSON: NO OBJECTION YOUR HONOR.

03:08:23 11 THE COURT: IT WILL BE ADMITTED.

03:08:25 12 (DEFENDANT'S EXHIBIT 6923 WAS ADMITTED INTO EVIDENCE.)

03:08:25 13 BY MR. FERRALL:

03:08:25 14 Q. IF WE COULD JUST LOOK AT THE HEADING IN THE TOP. CAN YOU

03:08:31 15 EXPLAIN A LITTLE BIT MORE ABOUT HOW THIS DOCUMENT CAME ABOUT?

03:08:36 16 A. WELL, AS I SAID, THIS WAS PART OF THAT STANDARDIZATION

03:08:39 17 EFFORT OF SOURCE-SPECIFIC MULTICAST IN THE IETF.

03:08:44 18 THIS WAS ONE OF THE STANDARDS DOCUMENTS FOR SOURCE

03:08:47 19 SPECIFIC MULTICAST. IT WAS WORK, AS I SAID, KIND OF STARTED AS

03:08:50 20 PART OF MY DISSERTATION AND THEN I PARTICIPATED IN THE IETF.

03:08:57 21 Q. NOW IT SAYS UNDER YOUR NAME THERE ARASTRA?

03:09:00 22 A. THAT'S CORRECT.

03:09:00 23 Q. AND THAT'S THE PREDECESSOR NAME FOR ARISTA?

03:09:02 24 A. THAT'S RIGHT.

03:09:03 25 Q. DID YOU DO ALL YOUR WORK ON THIS WHILE AT ARISTA?

03:09:05 1 A. NO, I DID NOT.

03:09:07 2 Q. CAN YOU EXPLAIN THEN WHY THIS DOCUMENT HAS THE ARASTRA

03:09:14 3 NAME ON IT, IF YOU WORKED ON IT WHILE IN OTHER PARTS OF YOUR

03:09:18 4 CAREER?

03:09:19 5 A. WELL, I MEAN, THIS IS, I THINK WE PROBABLY STARTED THE

03:09:23 6 WORK ON THIS IN 2000. AND I THINK THE PRACTICE OF THE IETF IS

03:09:28 7 TO PUT YOUR CURRENT ADDRESS ON THE DOCUMENT THAT YOU PUBLISH,

03:09:32 8 AS SORT OF THE DOCUMENTS OF THE IETF ARE NOT OWNED BY ANYONE,

03:09:37 9 THEY'RE -- THE IETF'S POLICY, AS I UNDERSTAND IT, IS THE WORK

03:09:42 10 IS INDIVIDUAL CONTRIBUTIONS BY INDIVIDUALS.

03:09:44 11 AND THE COMPANY NAME THAT'S ON THERE IS A KIND OF TIP OF

03:09:48 12 THE HAT TO THE COMPANY WHO PAID FOR YOUR HOTEL AND PAID FOR

03:09:53 13 YOUR PLANE FLIGHT, BUT YOU'RE REPRESENTING YOURSELF AT THE

03:09:56 14 IETF.

03:09:57 15 Q. AND WERE THERE EARLIER DRAFTS OF THIS DOCUMENT CIRCULATED

03:10:00 16 AMONG IETF PARTICIPANTS.

03:10:03 17 A. YES, ABSOLUTELY.

03:10:03 18 Q. FOR APPROXIMATELY HOW MANY YEARS?

03:10:05 19 A. I DON'T KNOW WHEN THE FIRST DRAFT WAS, BUT I THINK THE

03:10:08 20 WORKING GROUP STARTED IN PROBABLY 2000.

03:10:10 21 Q. OKAY. AND THE DATE OF THIS IS 2006?

03:10:13 22 A. THAT'S CORRECT.

03:10:13 23 Q. ARE YOU THE NAMED INVENTOR ON ANY PATENTS?

03:10:18 24 A. I AM.

03:10:18 25 Q. HOW MANY?

03:10:19 1 A. I THINK I HAD EIGHT FROM MY TIME AT CISCO, AND FIVE SINCE  
03:10:23 2 I HAVE BEEN AT ARISTA.

03:10:30 3 Q. I WOULD LIKE TO TURN TO YOUR JOINING ARISTA.

03:10:32 4 CAN YOU EXPLAIN GENERALLY THE CIRCUMSTANCES OF YOUR  
03:10:34 5 LEAVING CISCO AND JOINING ARISTA?

03:10:35 6 A. SURE. SO IN THE FALL OF 2004, I WAS ON PATERNITY LEAVE  
03:10:41 7 BECAUSE OF MY NOW SEVENTH GRADER HAD JUST BEEN BORN, SO I WAS  
03:10:44 8 HOME WITH HER. AND KEN CALLED ME UP, INVITED ME TO LUNCH.

03:10:49 9 Q. EXCUSE ME, THAT'S KEN DUDA?

03:10:50 10 A. YEAH, KEN DUDA. CALLED ME UP AND INVITED ME TO LUNCH AND  
03:10:56 11 SAID HE WAS STARTING A NEW COMPANY ALONG WITH ANDY BECHTOLSHEIM  
03:11:00 12 AND DAVID SHERATON, AND THAT THEY WERE GOING TO FOCUS ON  
03:11:02 13 SOFTWARE AND DO THINGS DIFFERENTLY, AND WAS I INTERESTED, AND  
03:11:07 14 THE WORDS WERE, DECLARING VICTORY OVER ETHERNET SWITCHING AND  
03:11:11 15 MOVING ON TO DO SOMETHING DIFFERENT.

03:11:12 16 Q. AND WHAT WAS YOUR REACTION?

03:11:13 17 A. WELL, I THOUGHT ABOUT IT FOR A LITTLE BIT AND I SAID YEAH,  
03:11:16 18 DEFINITELY.

03:11:16 19 Q. WHY?

03:11:16 20 A. I MEAN, THIS IS JUST A FANTASTIC OPPORTUNITY TO WORK WITH  
03:11:20 21 THREE PEOPLE WHO I HAVE THE UTMOST RESPECT FOR. THEY ARE  
03:11:24 22 BRILLIANT ENGINEERS AND SCIENTISTS AND GREAT PEOPLE TO WORK  
03:11:27 23 WITH. AND IT WAS JUST AN OPPORTUNITY I COULDN'T TURN DOWN.

03:11:32 24 Q. DID ARISTA HAVE A PRODUCT DESIGNED YET?

03:11:36 25 A. NO, THEY DIDN'T HAVE A PRODUCT AT ALL. THEY HAD SOME

03:11:39 1 IDEAS ABOUT WHAT THEY WERE GOING TO BUILD, BUT NO PRODUCT.

03:11:42 2 Q. AND YET YOU STILL WERE GOING TO JOIN ARISTA?

03:11:44 3 A. YEAH. AGAIN, THE STRENGTH OF THE TEAM AND THE VISION FOR

03:11:47 4 HOW WE WERE GOING TO BUILD SOFTWARE AND FOCUS ON SOFTWARE

03:11:51 5 INSTEAD OF HARDWARE, IT WAS JUST AN OPPORTUNITY THAT I COULD

03:11:54 6 NOT SAY NO TO.

03:11:55 7 Q. OKAY. AND AT SOME POINT, ARISTA DECIDED TO DEVELOP AN

03:11:59 8 ETHERNET SWITCH, CORRECT?

03:12:01 9 A. THAT'S CORRECT.

03:12:01 10 Q. AND WHEN WAS THAT DECISION MADE?

03:12:04 11 A. I THINK THAT WAS PROBABLY ABOUT A YEAR, I THINK ROUGHLY A

03:12:07 12 YEAR AFTER I STARTED.

03:12:08 13 WE KIND OF HAD SOME EARLY PRODUCT IDEAS, AND THEY ACTUALLY

03:12:11 14 TURNED OUT NOT TO BE VIABLE BASED ON CUSTOMERS THAT WE TALKED

03:12:14 15 TO, IT WASN'T A GOOD STRATEGY, AND SO WE MOVED INTO ETHERNET

03:12:19 16 SWITCHING.

03:12:19 17 Q. SO ONCE ARISTA HAD SETTLED ON MAKING ETHERNET SWITCHES,

03:12:26 18 CAN YOU TELL ME, GENERALLY, WHAT WAS ARISTA'S PRODUCT GOALS FOR

03:12:29 19 THAT ETHERNET SWITCH?

03:12:31 20 A. WELL, WE WERE LOOKING AT TARGETING THE RISING CLOUD

03:12:39 21 NETWORKS, THE CLOUD PROVIDERS, WHICH WAS KIND OF A BIG AND

03:12:42 22 RISING SEGMENT THE OF THE MARKET IN 2004, 2005, AND WE WERE

03:12:46 23 TARGETING THAT MARKET OF NETWORK EQUIPMENT.

03:12:49 24 Q. CAN YOU PROVIDE US SOME OF THE FEATURES OR CHARACTERISTICS

03:12:54 25 OF THE SWITCH THAT YOU THOUGHT WOULD BE ATTRACTIVE TO A CLOUD

03:12:59 1 NETWORKING COMPANY?

03:13:00 2 A. WELL, I THINK THAT WE WERE REALLY FOCUSED ON 10 GIGABIT

03:13:05 3 ETHERNET AT THE TIME. SO I THINK THE 10 GIGABIT ETHERNET,

03:13:07 4 WHICH WAS TEN TIMES FASTER THAN WHAT HAD BEEN THE KIND OF

03:13:11 5 WIDESPREAD TECHNOLOGY AT THE TIME, WHICH WAS 1 GIGABIT

03:13:14 6 ETHERNET, WITH HIGH DENSITY, MEANING A LOT OF PORTS IN A SINGLE

03:13:18 7 BOX.

03:13:18 8 AND WE FELT LIKE WE COULD BUILD THAT PRODUCT, AND ANDY HAD

03:13:22 9 AN ARCHITECTURE IN MIND FOR BUILDING THAT PRODUCT, AND WHICH

03:13:28 10 WAS PRETTY IMPRESSIVE, HONESTLY TO ME, AT THE TIME.

03:13:31 11 Q. WERE THERE ALREADY HIGH DENSITY 10 GIGABIT ETHERNET

03:13:35 12 SWITCHES OUT ON THE MARKET AT THIS TIME?

03:13:38 13 A. NO, THERE REALLY WEREN'T, PROBABLE TO WHAT WE PRODUCED.

03:13:43 14 Q. AND WERE YOU -- I THINK WE, THE JURY HAS ALREADY SEEN

03:13:54 15 THIS. DO YOU RECOGNIZE THIS EXHIBIT 5594, DO YOU RECOGNIZE

03:14:05 16 THIS?

03:14:06 17 A. YES, I DO RECOGNIZE THAT.

03:14:07 18 Q. AND DID YOU SEE THIS AT ARISTA?

03:14:11 19 A. YEAH, I DID. THIS HAS BEEN FLOATING AROUND AT ARISTA

03:14:14 20 SINCE MAYBE 2000, SINCE 2005, PROBABLY, OR WHENEVER IT WAS THAT

03:14:18 21 WE BUILT THAT.

03:14:20 22 THAT IS A STYROFOAM MARKUP THAT JOHN GRAVES BUILT ON THE

03:14:24 23 WEEKEND WITH HIS KIDS AT HOME FOR FUN OF THE 7500 CHASSIS, THIS

03:14:29 24 WAS ANDY'S ORIGINAL PRODUCT VISION. AND THE PRODUCT THAT WE

03:14:34 25 SELL NOW LOOKS PRETTY MUCH LIKE THAT.

03:14:35 1 Q. OKAY. AND I THINK THE JURY HEARD THAT THE 7500 WAS  
03:14:38 2 RELEASED IN 2010; IS THAT RIGHT?  
03:14:42 3 A. YEAH. I THINK WE HAD SOME EARLY CUSTOMER SHIPMENTS IN  
03:14:45 4 2009, BUT IT DIDN'T HIT WIDESPREAD MARKET, I DON'T THINK WE PUT  
03:14:49 5 IT FOR SALE, REALLY, UNTIL 2010.  
03:14:51 6 Q. OKAY. SO I WOULD LIKE TO TURN FOR A SECOND, MR. HOLBROOK,  
03:14:56 7 ABOUT OTHER PRODUCTS.  
03:15:00 8 DID ARISTA INTRODUCE ANY OTHER PRODUCTS BEFORE IT  
03:15:03 9 INTRODUCED THE 7500?  
03:15:04 10 A. WE DID.  
03:15:05 11 Q. AND CAN YOU TELL ME, AGAIN, GENERALLY, WHAT WAS THAT  
03:15:09 12 PRODUCT?  
03:15:10 13 A. WELL, THE KIND OF FUNDAMENTAL SWITCHING TECHNOLOGY, THE  
03:15:16 14 CHIP THAT WAS GOING TO GO INTO THAT PRODUCT WAS DELAYED, SO WE  
03:15:20 15 BUILT ONE RU, ONE RACK UNIT, WHICH IS ABOUT AN INCH AND A HALF  
03:15:25 16 HIGH PIZZA BOX, THEY ARE CALLED THE PIZZA BOX BECAUSE THEY KIND  
03:15:28 17 OF HAVE THE SHAPE OF A PIZZA BOX SWITCH, CALLED SONOMA WAS THE  
03:15:31 18 CODE NAME OF THE PRODUCT.  
03:15:32 19 Q. AND WHAT WAS THE PUBLIC PRODUCT NAME FOR THAT SWITCH?  
03:15:35 20 A. THAT WAS THE 7148, MAYBE 7148 SX, I THINK.  
03:15:40 21 Q. WAS THERE ANYTHING INNOVATIVE OR DISTINCTIVE ABOUT THE  
03:15:46 22 7148 PRODUCT AS COMPARED TO WHAT WAS ALREADY ON THE MARKET?  
03:15:49 23 A. YEAH, THERE WAS, IT WAS ACTUALLY PRETTY GROUND BREAKING AT  
03:15:53 24 THE TIME, IF YOU ASK ME.  
03:15:54 25 Q. CAN YOU TELL ME A COUPLE OF THINGS THAT WERE NEW ABOUT THE

03:15:57 1 7148?

03:15:58 2 A. THE 7148 WAS THE ONLY PRODUCTS THAT HAD 48 10 GIGABIT

03:16:04 3 ETHERNET PORTS.

03:16:04 4 SO BASICALLY IT WAS FASTER, HAD MORE PORTS IN IT THAN

03:16:09 5 ANYBODY ELSE. I THINK THE NEXT PRODUCT THAT HAD 48 10 GIGABIT

03:16:15 6 ETHERNET PORTS THAT I WAS AWARE OF CAME OUT THREE YEARS LATER.

03:16:22 7 Q. AND IF I COULD GET OUT, AND IF POSSIBLE HAND TO YOU THIS

03:16:28 8 FOR IDENTIFICATION, IT HAS BEEN MARKED EXHIBIT 5595; DO YOU

03:16:31 9 RECOGNIZE THIS?

03:16:32 10 A. I DO.

03:16:32 11 Q. WHAT IS THAT?

03:16:32 12 A. THAT IS THE GUTS, IT'S THE BOARD THAT'S INSIDE THE PIZZA

03:16:37 13 BOX OF THE 7148 SWITCH.

03:16:39 14 Q. OKAY.

03:16:42 15 MR. FERRALL: YOUR HONOR, IF I MAY ASK MR. HOLBROOK

03:16:43 16 TO COME DOWN FROM THE STAND TO --

03:16:45 17 THE COURT: THAT WOULD BE FINE, JUST KEEP YOUR VOICE

03:16:47 18 UP SO WE CAN ALL HEAR YOU.

03:16:49 19 THE WITNESS: OKAY.

03:16:51 20 Q. MR. HOLBROOK, I WOULD ASK YOU TO EXPLAIN TO THE JURY,

03:16:56 21 FIRST OF ALL, SOME OF THE KEY COMPONENTS OF THIS BOARD SUCH AS

03:17:01 22 THE PORTS AND THE CHIPS?

03:17:04 23 A. OKAY. SO THIS IS KIND OF THE GUTS OF THE SWITCH THAT

03:17:08 24 TYPICALLY WOULD SIT AT THE TOP OF A RACK OF 40 SERVERS, 40 TO

03:17:13 25 48 SERVERS UNDERNEATH IT.

03:17:14 1 AND EACH ONE WOULD HAVE -- EACH SERVER WOULD HAVE A PLUG

03:17:17 2 THAT CONNECTS INTO ONE OF THESE HOLES ON THE FRONT PANEL. AND

03:17:20 3 THAT'S HOW THE SERVERS CONNECT UP TO THE SWITCH.

03:17:23 4 AND THEN SOME OF THESE PORTS WOULD CONNECT OFF TO OTHER

03:17:27 5 SWITCHES AND ELSEWHERE IN THE NETWORK, AND THIS IS HOW THE

03:17:30 6 SERVER CONNECTS UP TO THE NETWORK.

03:17:32 7 SO THIS IS A BOARD THAT HAS, IT HAS SIX CHIPS ON IT HERE.

03:17:36 8 SO YOU CAN SEE WE HAVE ACTUALLY TAKEN THE HEAT SINKS OFF OF TWO

03:17:40 9 OF THEM. THESE TWO WOULD HAVE HEAT SINKS AS WELL.

03:17:43 10 SO THESE ARE THE SWITCHING CHIPS FROM A COMPANY CALLED

03:17:46 11 FULCRUM MICROSYSTEMS THAT WAS SELLING 24 PORT ETHERNET CHIPS AT

03:17:52 12 THE TIME.

03:17:53 13 THIS IS LIKE 2007, 2008 WHEN WE DESIGNED THIS. AND WE PUT

03:17:59 14 SIX OF THEM TOGETHER IN THIS SYSTEM TO BUILD A 48 PORT SWITCH.

03:18:06 15 IT'S KIND OF FUNNY BECAUSE YOU GO FROM 24 TO 48, YOU HAVE TO

03:18:10 16 PUT SIX, BECAUSE THAT'S BECAUSE MOST OF YOUR PORTS ARE ACTUALLY

03:18:13 17 INTERNAL AND YOU ONLY GET HALF OF THE ONES ON THESE FOUR CHIPS

03:18:17 18 PULLING TO THE FRONT. SO THAT'S WHY YOU GET 48 WITH SIX CHIPS.

03:18:20 19 Q. AND THE LET ME RETURN TO THAT FOR A SECOND, MR. HOLBROOK.

03:18:23 20 THE PORTS ARE THESE ITEMS ON THE FRONT; RIGHT?

03:18:27 21 A. THAT'S THESE HOLES HERE ARE THE PORTS.

03:18:29 22 Q. SO WHY IS IT SO DIFFICULT TO JUST PUT 48 PORTS ON THIS

03:18:38 23 PIZZA BOX SIZE DEVICE AND SELL IT?

03:18:40 24 A. RIGHT. WELL, YOU CAN SEE THERE'S NOT A LOT OF EXTRA ROOM

03:18:43 25 ON THIS BOARD. SO AT THE TIME, ENGINEERING-WISE, IT WAS

03:18:48 1 ACTUALLY FAIRLY CHALLENGING TO DO THIS.

03:18:50 2 SO FULCROM WHICH WAS THE CHIP VENDOR, WASN'T SURE, THEY

03:18:54 3 WERE SKEPTICAL THAT WE WOULD BE ABLE TO PUT SIX CHIPS ON A

03:18:58 4 BOARD AND DELIVER POWER TO THEM AND COOL THEM, EACH OF THEM IS

03:19:02 5 LIKE 50 OR 60 WATTS.

03:19:04 6 SO THE WHOLE SYSTEM WAS ABOUT 500 WATTS. YOU THINK ABOUT

03:19:08 7 HOW MUCH HEAT IS GENERATED BY 500 WATT LIGHT BULBS INSIDE THE

03:19:17 8 PIZZA BOX, IT'S AN AWFUL LOT OF HEAT INSIDE A SMALL SPACE.

03:19:23 9 AND SO THERE WAS ACTUALLY SOME SOPHISTICATED COOLING

03:19:26 10 TECHNOLOGY THAT WE HAD TO HAVE, SO WE ACTUALLY FOUND A FAN

03:19:29 11 COMPANY IN SOUTHERN CALIFORNIA THAT MADE REALLY HIGH POWERED

03:19:32 12 FANS ON THE BACK TO SUCK THE HEAT OUT OF THIS SYSTEM TO KEEP

03:19:37 13 THESE THINGS COOL FROM OVERHEATING.

03:19:39 14 Q. NOW MR. HOLBROOK, YOU MENTIONED THAT THE CHIPS ARE,

03:19:44 15 HAVE -- THEY, THEMSELVES, HAVE 24 PORTS PER CHIP?

03:19:47 16 A. RIGHT.

03:19:48 17 Q. BUT YOU ONLY HAVE 48 TOTAL ON THE SWITCH?

03:19:52 18 A. RIGHT.

03:19:53 19 Q. SO WITHOUT GETTING INTO ELECTRONICS, WHY DO YOU NEED SIX

03:20:02 20 24-PORT CHIPS TO DO ONE 48-PORT SWITCH?

03:20:05 21 A. WELL, IT'S BECAUSE ON THESE FOUR CHIPS, THERE ARE 12 PORTS

03:20:10 22 EACH TO THE FRONT PANEL AND THOSE ARE 12, PLUS 12, PLUS 12,

03:20:15 23 PLUS 12 IS 48. SO THOSE ARE THE 48 THAT COME OUT.

03:20:18 24 12 GO TO THE BACK FROM EACH OF THESE, TO INTERCONNECT

03:20:22 25 THESE FOUR CHIPS. AND THEN THESE TWO SERVE NO PURPOSE EXCEPT

03:20:26 1 TO INTERCONNECT THESE FOUR.

03:20:28 2 SO I HAVE TO SORT OF PUT SIX TIMES AS MANY CHIPS IN ORDER

03:20:33 3 TO DOUBLE THE FRONT PANEL CAPACITY.

03:20:35 4 AND THIS WAS REALLY DIFFICULT FOR ME TO WRAP MY HEAD

03:20:38 5 AROUND THE FIRST TIME I HEARD ABOUT IT. BUT IT'S KIND OF

03:20:42 6 STANDARD IN THE INDUSTRY NOW.

03:20:44 7 Q. AND WHAT SORT OF ENGINEERING DID ARISTA HAVE TO DO IN

03:20:48 8 ORDER TO MAKE THOSE SIX CHIPS WORK?

03:20:50 9 A. WELL, I MEAN, I THINK MAKING THESE WORK INSIDE THE EOS

03:20:56 10 WASN'T ALL THAT EASY. WHEN YOU BUY THESE CHIPS, THEY COME FROM

03:20:59 11 THE CHIP VENDOR WITH SOME SOFTWARE TO CONTROL THEM, TO JUST

03:21:02 12 READ AND WRITE THE MEMORIES AND TABLES INSIDE THEM, BUT IT

03:21:06 13 DOESN'T PUT THEM INTO A SYSTEM.

03:21:08 14 SO YOU'VE GOT TO BUILD THEM INTO A SYSTEM, INTEGRATE THEM,

03:21:12 15 WE RAN LINUX ON THIS, SO THIS IS A PROCESSOR, THIS IS JUST AN

03:21:17 16 X86 PROCESSOR LIKE YOU MIGHT HAVE IN YOUR LAPTOP OR DESKTOP

03:21:22 17 COMPUTER HERE.

03:21:22 18 AND TO INTEGRATE THESE CHIPS AND MAKE THEM LOOK KIND OF TO

03:21:27 19 LINUX, WELL TO THE SOFTWARE, TO MAKE THEM APPEAR TO THE

03:21:32 20 SOFTWARE IN THE WAY THAT THE SOFTWARE CAN EFFECTIVELY USE THEM,

03:21:34 21 REQUIRED A BUNCH OF ENGINEERING.

03:21:37 22 LOAD BALANCING THE TRAFFIC ACROSS THE INTERNAL LINKS AND

03:21:39 23 GETTING IT TO FLOW RIGHT WAS A BUNCH OF ENGINEERING. YOU

03:21:42 24 COULDN'T JUST TAKE THESE CHIPS AND PLOP THEM DOWN ON THE BOARD

03:21:45 25 AND GET A SWITCH, THERE WAS A SUBSTANTIAL SOFTWARE EFFORT.

03:21:48 1 Q. DID -- TO YOUR KNOWLEDGE, DID ANY OTHER SWITCH  
03:21:51 2 MANUFACTURER HAVE A 48-PORT 10 GIGABIT ETHERNET SWITCH IN THIS  
03:21:58 3 TIME?  
03:21:58 4 A. NO.  
03:21:59 5 Q. AND TO BE CLEAR, WHAT TIME FRAME ARE WE TALKING ABOUT WHEN  
03:22:02 6 ARISTA INTRODUCED THIS?  
03:22:03 7 A. I THINK THIS WAS INTRODUCED IN THE SUMMER OF 2008.  
03:22:06 8 Q. AND TO YOUR KNOWLEDGE, HOW LONG DID IT TAKE BEFORE ANOTHER  
03:22:11 9 10 GIGABIT 48-PORT SWITCH ENTERED THE MARKET?  
03:22:14 10 A. I THINK IT WAS THREE YEARS LATER WHEN SILICON TECHNOLOGY  
03:22:18 11 ADVANCED, SO THERE WAS A SINGLE CHIP, 48-SWITCH CHIP THAT COULD  
03:22:22 12 DO 48 PORTS, BUT NO ONE ELSE BUILT THIS AT THAT TIME. AND IT  
03:22:26 13 WAS ACTUALLY FAIRLY EYE OPENING FOR THE INDUSTRY.  
03:22:30 14 Q. WHAT SORT OF REACTION -- YOU COULD PUT THIS DOWN AND  
03:22:33 15 RETURN TO YOUR STAND, PLEASE.  
03:22:41 16 MR. HOLBROOK, WHAT SORT OF REACTION DID YOU GET FROM THE  
03:22:45 17 THIRD PARTIES OR THE OUTSIDE WORLD TO THIS SWITCH WHEN YOU  
03:22:51 18 INTRODUCED IT?  
03:22:52 19 A. WE INTRODUCED THIS TO SUPER COMPUTING 07 WHICH IS A BIG  
03:22:55 20 CONFERENCE OF HIGH PERFORMANCE COMPUTING IN THE INDUSTRY  
03:22:58 21 CONFERENCE, IT'S PRETTY WELL ATTENDED.  
03:23:02 22 AND WHAT I HEARD WAS PEOPLE WERE CALLING IT A GOD BOX.  
03:23:05 23 Q. AND DID YOU HEAR ANY OTHER REACTION FROM CUSTOMERS OR  
03:23:10 24 POTENTIAL CUSTOMERS ABOUT THIS?  
03:23:11 25 A. YEAH, CUSTOMERS WERE VERY EXCITED ABOUT IT.

03:23:13 1 Q. AND WHAT DID THE CHIP MANUFACTURER, DID THEY PROVIDE ANY  
03:23:19 2 REACTION?

03:23:19 3 A. WELL, AS I SAID, THEY -- THEY DIDN'T THINK WE COULD PUT IT  
03:23:25 4 TOGETHER. WE ACTUALLY HAD ONE CUSTOMER THAT WAS ACTUALLY VERY  
03:23:27 5 INTERESTED IN THIS AND THEY WERE A BIG WEB COMPANY IN SILICON  
03:23:32 6 VALLEY. AND THEY WERE VERY INTERESTED IN THE PRODUCT, USING  
03:23:35 7 IT, AND WE KNOW THAT THEY WERE ACTUALLY BUILDING THEIR OWN  
03:23:38 8 SWITCHES AS WELL.

03:23:39 9 AND THEY LOOKED AT THE BOARD, AND THIS IS WHEN WE HAD  
03:23:43 10 PROTOTYPES, WE INTRODUCED THEM TO OUR LAB AND WE WERE TALKING  
03:23:46 11 TO THEM ABOUT HOW WE WERE GOING TO BUILD THIS AND THEY SAID,  
03:23:49 12 YOU CAN'T BUILD THAT. AND WE SAID WELL, WE ARE PRETTY SURE WE  
03:23:53 13 CAN.

03:23:53 14 Q. WHAT DID YOU UNDERSTAND THEM TO MEAN WHEN THEY SAID YOU  
03:23:55 15 CAN'T BUILD IT?

03:23:56 16 A. WELL, THIS WAS THEIR SIGNAL INTEGRITY EXCERPT WHO CAME IN,  
03:24:01 17 ALONG WITH THEIR HARDWARE TEAM AND THEY SAID, THAT'S -- IT'S  
03:24:04 18 IMPOSSIBLE TO BUILD IT. WE'VE LOOKED AT THE ELECTRICAL  
03:24:07 19 CHARACTERISTICS OF THE CHIPS YOU ARE USING AND YOU WON'T BE  
03:24:10 20 ABLE TO RUN THEM THAT FAR, IT WON'T WORK, YOU WON'T BE ABLE TO  
03:24:14 21 DRIVE A THREE-METER CONNECTION OUT THE FRONT PANEL, YOU WON'T  
03:24:17 22 BE ABLE TO MEET THE NEEDS FOR OUR PURPOSES.

03:24:19 23 Q. AND WHAT DID YOU DO IN RESPONSE?

03:24:22 24 A. WELL, WE SAID, WOULD YOU LIKE TO SEE IT? AND SO WE TOOK  
03:24:27 25 THEM INTO OUR LAB AND SHOWED THEM THAT SWITCH OR, YOU KNOW,

03:24:31 1 ANOTHER VERSION OF IT, HOOKED UP WITH TEN CABLES RUNNING ON ALL  
03:24:36 2 THE PORTS AND THEN THEY BELIEVED US.

03:24:39 3 Q. OKAY. ALL RIGHT. I WOULD LIKE TO TURN NOW TO EOS AND  
03:24:44 4 TALK ABOUT THAT FOR A LITTLE BIT.

03:24:46 5 AND TO HELP OUR DISCUSSION, IF WE COULD PULL UP A SLIDE  
03:24:51 6 FROM EXHIBIT 267. IT'S 267 IN YOUR BOOK, IN YOUR NOTEBOOK.  
03:24:59 7 AND I THINK WE ARE LOOKING AT THE PAGE 85.

03:25:07 8 MR. FERRALL: THIS IS JUST A DEMONSTRATIVE,  
03:25:08 9 YOUR HONOR.

03:25:12 10 A. OKAY.

03:25:12 11 Q. DO YOU RECOGNIZE THIS?

03:25:13 12 A. I DO.

03:25:14 13 Q. AND CAN YOU TELL US WHAT IT IS, PLEASE?

03:25:16 14 A. SO THIS IS A PAGE FROM A PRESENTATION THAT I HAVE BEEN  
03:25:21 15 GIVING FOR AT LEAST FIVE YEARS, I WOULD SAY, TO NEW ENGINEERS  
03:25:25 16 THAT SHOW UP AT ARISTA.

03:25:26 17 WE HAVE A SORT OF A TRAINING SERIES TO NEW ENGINEERS AT  
03:25:31 18 ARISTA EVERY, THE FIRST SIX WEEKS THEY GET A BUNCH OF TALKS TO  
03:25:35 19 DIFFERENT PEOPLE, AND I GIVE ONE OF THOSE TALKS AND THIS IS A  
03:25:37 20 PAGE TALKING ABOUT EOS.

03:25:39 21 Q. THE FIRST BULLET POINT SAYS, "SUPPORT MESSING WITH EOS,"  
03:25:42 22 WHAT DO YOU MEAN BY THAT?

03:25:43 23 A. WELL, I MEAN, THE TITLE IS EXTENSIBILITY. SO I MEAN, EOS  
03:25:46 24 STANDS FOR THE EXTENSIBLE OPERATING SYSTEM.

03:25:49 25 SO THIS IS TALKING ABOUT WAYS THAT YOU COULD EXTEND EOS.

03:25:54 1 SO THIS WAS LETTING CUSTOMERS USE EOS AND MODIFY IT, CUSTOMIZE  
03:25:59 2 IT FOR THEIR OWN PURPOSES.

03:26:01 3 Q. WHAT ABOUT EOS MAKES IT EXTENSIBLE?

03:26:04 4 A. WELL, THERE'S A NUMBER OF THINGS, BUT I THINK IT WAS THE  
03:26:08 5 WAY THAT WE EXPOSED LINUX TO CUSTOMERS. IT WAS THE  
03:26:14 6 PROGRAMMABLE API'S THAT WE ADDED TO THE SYSTEM TO ALLOW OUR  
03:26:18 7 CUSTOMERS TO PROGRAM IT. IT WAS THE CHOICE OF WHICH FLAVOR OF  
03:26:22 8 LINUX WE USED.

03:26:24 9 Q. HAVE YOU EVER PREPARED A DEMONSTRATION OF SORTS FOR  
03:26:30 10 CUSTOMERS ABOUT HOW YOU CAN EXTEND EOS?

03:26:33 11 A. YEAH, I HAVE MULTIPLE TIMES.

03:26:35 12 Q. IF WE COULD LOOK AT THE SLIDE WE HAVE PREPARED FROM  
03:26:40 13 EXHIBIT 7724. I THINK IT'S FROM THE LAST PAGE OF THAT EXHIBIT,  
03:26:50 14 YEAH, THERE YOU GO.

03:26:51 15 DO YOU RECOGNIZE THIS?

03:26:52 16 A. YES, I DO. THIS IS A PROGRAM, A LITTLE PROGRAM THEY WROTE  
03:26:58 17 CALLED SENDPAGE.COM.

03:27:03 18 Q. TO BE CLEAR, THIS IS A LITTLE COMPUTER PROGRAM?

03:27:06 19 A. YES.

03:27:08 20 Q. ALL RIGHT.

03:27:09 21 A. THAT RUNS ON EOS.

03:27:10 22 Q. WHY DID YOU PREPARE THIS LITTLE PROGRAM?

03:27:12 23 A. SO THIS WAS AN EXAMPLE OF A RELATIVELY SHORT COMPUTER  
03:27:17 24 PROGRAM THAT YOU COULD USE TO CUSTOMIZE EOS THAT A CUSTOMER  
03:27:21 25 MIGHT ACTUALLY BE ABLE TO WRITE THEMSELVES.

03:27:24 1 Q. SO TO BE CLEAR, DOES THIS PROGRAM COME WITH EOS?

03:27:29 2 A. NO.

03:27:30 3 Q. SO THE PURPOSE OF THIS DEMONSTRATION THAT YOU HAD WAS FOR

03:27:33 4 WHAT?

03:27:33 5 A. WELL, THIS WAS TO SHOW A CUSTOMER HOW WITH A RELATIVELY

03:27:37 6 SIMPLE PROGRAM YOU COULD EXTEND EOS TO ADD SOME NEW

03:27:41 7 FUNCTIONALITY THAT WASN'T CONTEMPLATED BY US, THE SOFTWARE TEAM

03:27:46 8 THAT WROTE AND SOLD THE EOS.

03:27:48 9 Q. AND WHAT DID THIS LITTLE PROGRAM DO?

03:27:50 10 A. WELL, IT WAS A FAIRLY SIMPLE THING. SO THIS PROGRAM WAS

03:27:55 11 SIMPLE BUT POWERFUL, SO THIS PROGRAM WOULD, WHEN YOU PULLED OUT

03:28:00 12 A CABLE OUT OF THE FRONT PANEL OR WHEN A SERVER WOULD CRASH, IT

03:28:04 13 SENDS AN E-MAIL. AND IT CAN SEND AN E-MAIL TO -- BACK IN THOSE

03:28:09 14 DAYS, PEOPLE CARRIED A PAGER. SO WHEN YOU WERE A NETWORK

03:28:13 15 OPERATOR, YOU WOULD GET A PAGE WHEN A SERVER WENT DOWN.

03:28:16 16 Q. NOW TO YOUR KNOWLEDGE, DID OTHER NETWORK OPERATING SYSTEMS

03:28:22 17 AT THIS TIME HAVE THE ABILITY TO ADD A PROGRAM LIKE THIS?

03:28:25 18 A. NO. AS FAR AS I KNOW, WE WERE UNIQUE IN THAT REGARD.

03:28:27 19 Q. AND WHEN DID YOU PREPARE THIS, BY THE WAY?

03:28:31 20 A. 2007, I THINK.

03:28:32 21 Q. SO EARLY AT ARISTA?

03:28:33 22 A. YEAH.

03:28:34 23 Q. NOW IF YOU -- IN OTHER OPERATING SYSTEMS AT THE TIME, IF

03:28:42 24 YOU COULDN'T ADD YOUR OWN EXTENSIONS, HOW WOULD YOU BE ABLE TO

03:28:45 25 ADD FUNCTIONALITY TO THE OPERATING SYSTEM?

03:28:46 1 A. WELL, YOU HAD TO GET THE VENDOR INVOLVED. SO YOU WOULD  
03:28:49 2 HAVE TO CALL UP THE SWITCH VENDOR AND EXPRESS WHAT YOU WOULD  
03:28:55 3 LIKE IT TO DO, GO BACK AND FORTH. THEY MIGHT START WORKING ON  
03:28:59 4 IT. THEY WOULD DEVELOP IT, SIX MONTHS LATER IT MIGHT APPEAR IN  
03:29:02 5 RELEASE, AND YOU MIGHT DEPLOY IT IN YOUR NETWORK A YEAR LATER  
03:29:06 6 IF YOU WERE AN IMPORTANT ENOUGH CUSTOMER AND IF THEY THOUGHT IT  
03:29:09 7 WAS WORTHWHILE FOR YOU TO BUILD THAT FEATURE FOR YOU.  
03:29:11 8 Q. AND IF WE COULD GO BACK THEN TO THE PREVIOUS SLIDE WE  
03:29:16 9 LOOKED AT EXTENSIBILITY.  
03:29:20 10 THE LAST BULLET POINT HERE SAYS, "HUGE QUESTION IS CAN WE  
03:29:24 11 SUPPORT THIS," WHAT DID YOU MEAN BY THAT?  
03:29:27 12 A. SO THIS WAS AN INTERNAL DEBATE WITH RESPECT TO ALLOWING  
03:29:31 13 CUSTOMERS TO EXTEND EOS. SO THE FEAR WAS THAT IF A CUSTOMER  
03:29:35 14 EXTENDED EOS, THAT THAT COULD CREATE PROBLEMS, LIKE THEY COULD  
03:29:39 15 INTERFERE WITH THINGS THAT WE WERE DOING INSIDE EOS AND WE KIND  
03:29:43 16 OF WOULD STEP ON EACH OTHER AND THE SWITCH WOULD BE BROKEN.  
03:29:46 17 AND THEN THE CUSTOMER WOULD CALL US UP OR CALL OUR SUPPORT  
03:29:49 18 LINE AND SAY, HEY, MY SWITCH ISN'T WORKING, AND WE WOULDN'T  
03:29:53 19 KNOW HOW TO FIX IT BECAUSE WE DIDN'T KNOW WHAT KIND OF CHANGES  
03:29:56 20 THEY MIGHT HAVE MADE AND WE WERE OPENING UP ALL OF EOS AND ALL  
03:29:59 21 OF LINUX TO THE CUSTOMERS TO MODIFY IT.  
03:30:01 22 SO THAT WAS THE "CAN WE SUPPORT THIS QUESTION," WILL WE  
03:30:05 23 LITERALLY BE ABLE TO SUPPORT THE CUSTOMERS WHEN THEY CHANGE IT.  
03:30:08 24 Q. WHAT DID YOU LEARN AS AN ANSWER TO THIS QUESTION, IF YOU  
03:30:11 25 WILL?

03:30:11 1 A. WELL, I MEAN, THIS WAS KIND OF THROUGH DISCUSSIONS AND  
03:30:14 2 THROUGH OUR EXPERIENCE, THIS WAS ACTUALLY AN UNFOUNDED CONCERN.  
03:30:19 3 IF YOU THINK ABOUT IT, OTHER OPERATING SYSTEM VENDORS LIKE  
03:30:23 4 APPLE AND MICROSOFT, THEY DON'T TELL CUSTOMERS, YOU CAN'T RUN  
03:30:27 5 SOFTWARE ON OUR PRODUCTS, WE WON'T BE ABLE TO SUPPORT YOU, IT  
03:30:31 6 MIGHT BREAK SOMETHING.  
03:30:32 7 AND THAT'S CRAZY, RIGHT, YOU BUY AN APPLE LAPTOP AND YOU  
03:30:35 8 CAN'T INSTALL SOFTWARE ON IT. AND WHY SHOULD SWITCH VENDORS BE  
03:30:39 9 ANY DIFFERENT BECAUSE FUNDAMENTALLY, IT'S JUST AN OPERATING  
03:30:42 10 SYSTEM. LINUX ISN'T THAT DIFFERENT FROM MAC OS OR WINDOWS,  
03:30:45 11 IT'S JUST ANOTHER OPERATING SYSTEM.  
03:30:46 12 AND WE SAID, WE SHOULD BE ABLE TO SUPPORT THIS. AND IN  
03:30:50 13 FACT, WE HAVE BEEN ABLE TO BECAUSE THE CUSTOMERS HAVE BEEN  
03:30:53 14 INSTALLING THESE EXTENSIONS ON THEIR SWITCH, DON'T ACTUALLY  
03:30:57 15 BREAK THINGS.  
03:30:57 16 I MEAN, IN WINDOWS I CAN GO IN OR IN THE MAC OS I CAN GO  
03:31:04 17 IN AND DELETE ALL KINDS OF FILES THAT WOULD MAKE MY SYSTEM  
03:31:07 18 NONOPERATIONAL, BUT PEOPLE DON'T HAVE ANY INTEREST IN DOING  
03:31:16 19 THAT BECAUSE OUR CUSTOMERS AREN'T INTERESTED IN BEING ON THE  
03:31:20 20 PHONE WITH OUR TECH SUPPORT, WHILE WE FIGURE OUT WHAT'S WRONG  
03:31:24 21 WITH THEIR SYSTEM.  
03:31:25 22 Q. OKAY. LINUX HAS BEEN DISCUSSED?  
03:31:27 23 A. YES.  
03:31:28 24 Q. A NUMBER OF TIMES. AND DO YOU HAVE ANY EXAMPLES YOU COULD  
03:31:34 25 GIVE ABOUT HOW ARISTA'S USE OF LINUX HAS BEEN A BENEFIT TO

03:31:40 1 CUSTOMERS?

03:31:41 2 A. OH, SURE. WELL, SO ONE EXAMPLE, AND IT'S NOT JUST LINUX

03:31:47 3 BUT IT'S, IT'S THE PARTICULAR WAY WE INTEGRATED LINUX, BUT WE

03:31:52 4 MADE IT POSSIBLE FOR OUR CUSTOMERS TO USE OPEN SOURCE LINUX

03:31:55 5 SOFTWARE.

03:31:58 6 SO THERE'S ONE PARTICULAR PHONE CALL THAT I REMEMBER WITH

03:32:00 7 ONE OF THE NEW YORK BANKS, I THINK IT WAS MERRILL LYNCH, IN

03:32:04 8 2008 OR 2009, 2007, I'M NOT SURE, WHERE THEY WERE ON THE PHONE

03:32:09 9 AND THAT ASKED IF WE SUPPORTED SOMETHING CALLED PTP, WHICH

03:32:13 10 STANDS FOR THE PRECISION TIME KEEPING PROTOCOL.

03:32:15 11 IT'S A WAY TO SYNCHRONIZE THE CLOCK OF A COMPUTER VERY

03:32:18 12 ACCURATELY. AND I HAD NEVER HEARD OF IT AND I SAID NO, SORRY,

03:32:21 13 WE DON'T SUPPORT PTP. AND SO THE CALL ENDED.

03:32:23 14 THEN AFTER THE CALL I SAID, MAYBE I SHOULD LOOK INTO PTP.

03:32:27 15 SO I LITERALLY GOOGLED PTP, AND IT TOOK ME TO A WEBSITE WHICH

03:32:32 16 WAS PTP.ORG. AND I WENT TO PTP.ORG AND IT HAD, YOU KNOW, A

03:32:37 17 SMALL WEB FRONT END AND IT HAD A READ ME FILE AND CLICK HERE TO

03:32:41 18 DOWNLOAD SOFTWARE.

03:32:42 19 SO I DOWNLOADED THIS SOFTWARE ONTO MY LAPTOP, UNPACKED IT,

03:32:46 20 COMPILED IT, AND THEN COPIED THE EXECUTABLE BINARY TO OUR

03:32:52 21 SWITCH AND STARTED THE PROGRAM.

03:32:54 22 AND THAT WAS LIKE ALL IN THE SPACE OF AN HOUR GOING FROM,

03:32:58 23 I NEVER LITERALLY HEARD OF PTP, TO HAVING IT RUNNING AS A

03:33:01 24 FEATURE ON OUR SWITCH.

03:33:03 25 AND THEN I CALLED BACK THE ACCOUNT TEAM AND SAID WAIT, NO,

03:33:06 1 I TOLD YOU THAT WE DIDN'T SUPPORT PTP, I THINK WE ACTUALLY CAN.

03:33:10 2 AND THAT'S, FOR ME, WAS A MOMENT WHERE I'M LIKE, WE ARE ON TO

03:33:15 3 SOMETHING, LIKE, THIS IS REALLY NEAT.

03:33:17 4 Q. WAS THAT SIMILAR BEHAVIOR AVAILABLE IN OTHER NETWORK

03:33:25 5 OPERATING SYSTEMS, TO YOUR KNOWLEDGE?

03:33:26 6 A. NONE THAT I KNOW OF.

03:33:28 7 Q. IF WE COULD PUT UP, MR. DAHM, THE SECOND, THE THIRD

03:33:33 8 DEMONSTRATIVE PAGE THAT WE HAD FOR MR. HOLBROOK. SORRY, NO

03:33:37 9 IT'S THE VARIOUS FEATURES.

03:33:41 10 THERE WE GO. DO YOU RECOGNIZE THIS, MR. HOLBROOK?

03:33:44 11 A. YES, I DO.

03:33:44 12 Q. WHAT IS IT, PLEASE?

03:33:46 13 A. WELL, THIS IS A DESCRIPTION OF A BUNCH OF KIND OF

03:33:50 14 NONTRADITIONAL FEATURES THAT WE SUPPORT IN EOS.

03:33:54 15 Q. ARE THESE FEATURES THAT ARISTA USED FROM SOME OTHER SOURCE

03:34:05 16 OR DID THEY DEVELOP THEM THEMSELVES?

03:34:07 17 A. THESE ARE ALL THE FEATURES WE DEVELOPED AT ARISTA, KIND OF

03:34:11 18 AS FEATURES OF ARISTA EOS THAT I DO NOT THINK AT THE TIME WERE

03:34:14 19 SUPPORTED ANYWHERE ELSE.

03:34:15 20 Q. OKAY. I WANT TO JUST TALK ABOUT A COUPLE OF THEM IN THE

03:34:17 21 TIME THAT WE HAVE.

03:34:21 22 LANZ IS THE SECOND ONE. CAN YOU TELL THE JURY WHAT A LANZ

03:34:26 23 IS?

03:34:26 24 A. SURE. SO LANZ IS SORT OF A CONTRACTION OF LATENCY

03:34:32 25 ANALYZER. SO LATENCY IS ABOUT TIME DELAYS. SO WHAT THIS

03:34:38 1 FEATURE WAS ABOUT WAS DETECTING PACKETS, TRAFFICKED THROUGH A  
03:34:43 2 SWITCH, THAT WAS DELAYED BY VERY SMALL AMOUNTS OF TIME.  
03:34:47 3 SO AS NETWORKS GET HIGHER AND HIGHER SPEED, I CAN HAVE  
03:34:50 4 PACKETS DROPPED DUE TO CONGESTION EVENTS OR DUE TO CONGESTION  
03:34:56 5 INSIDE THE SWITCH THAT MIGHT ONLY LAST FOR A MICROSECOND OR  
03:35:00 6 TWO, LIKE A MILLIONTH OF A SECOND.  
03:35:03 7 AND DETECTING THOSE IN TRADITIONAL WAYS BY LOOKING AT  
03:35:06 8 COUNTERS AND CHECKING TO SEE IF THE SWITCH IS CONGESTED AT EACH  
03:35:08 9 POINT IN TIME, YOU WILL NEVER SEE IT IF IT ONLY HAPPENS ARE FOR  
03:35:13 10 A MILLIONTH OF A SECOND.  
03:35:13 11 Q. AND LET ME ASK YOU, MR. HOLBROOK, WHY DOES THAT MATTER IF  
03:35:16 12 IT'S ONLY DELAYED FOR MILLIONTH OF A SECOND, SO WHAT?  
03:35:19 13 A. WELL, IT'S NOT THE -- THE DELAY IS FOR -- VERY SHORT  
03:35:24 14 DELAYS CAN RESULT IN PACKET DROPS WHICH CAN HAVE MEANINGFUL  
03:35:29 15 IMPACTS ON CUSTOMER'S APPLICATIONS IF THEY ARE NOT EXPECTING  
03:35:34 16 THEIR PACKETS TO BE DROPPED.  
03:35:36 17 THIS WAS IMPORTANT IN HIGH PERFORMANCE COMPUTING AND SOME  
03:35:39 18 FINANCIAL APPLICATIONS, RELIABLE, ALWAYS ON TIME DELIVERY  
03:35:41 19 WITHOUT DELAYS, WELL, CUSTOMERS DIDN'T DESIGN THEIR NETWORKS  
03:35:45 20 WITH THE EXPECTATION THAT THEY WOULD GET THAT, AND THEY WANTED  
03:35:48 21 TO KNOW IF THEY WERE EVER EXPERIENCING DELAYS OR DROPS THAT WE  
03:35:51 22 COULDN'T OTHERWISE SEE.  
03:35:52 23 Q. SO DOES ARISTA HAVE ANY INTELLECTUAL PROPERTY ASSOCIATED  
03:35:55 24 WITH THIS LATENCY ANALYZER FEATURE?  
03:35:57 25 A. YES, WE FILED A PATENT ON THIS.

03:36:00 1 Q. AND DO YOU HAVE ANY INVOLVEMENT IN THAT?

03:36:02 2 A. YEAH. I WAS ONE OF THE INVENTORS, ALONG WITH

03:36:06 3 ANSHUL SADANA AND KEN DUDA.

03:36:08 4 Q. THE NEXT ITEM I WANTED TO TALK ABOUT BRIEFLY IS ZTP. CAN

03:36:12 5 YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT THAT IS?

03:36:14 6 A. YES, ZTP IS ANOTHER FEATURE WE DEVELOPED AT ARISTA, AND IT

03:36:18 7 STANDS FOR ZERO TOUCH PROVISIONING.

03:36:21 8 SO THE IDEA BEHIND ZTP WAS TO SIMPLIFY THE INSTALLATION OF

03:36:30 9 LARGE DATA CENTERS WITH LOTS AND LOTS OF SWITCHES IN THEM AND

03:36:35 10 ALLOW SOMEONE TO INSTALL A SWITCH, PLUG IT IN AND THEN HAVE IT

03:36:39 11 JUST WORK.

03:36:40 12 Q. CAN YOU GIVE AN EXAMPLE OF HOW ZTP HAS BEEN USED BY A

03:36:45 13 CUSTOMER OF ARISTA'S?

03:36:46 14 A. YEAH, ACTUALLY THERE WAS A CUSTOMER THAT JUST A COUPLE OF

03:36:48 15 MONTHS AGO, TOLD ME THAT THEY INSTALLED A 10,000 SQUARE FOOT

03:36:53 16 DATA CENTER WITH 136 RACKS, I THINK, AND 22 SPINE SWITCHES IN

03:36:57 17 IT.

03:36:59 18 AND IT TOOK THEM TWO HOURS TO POWER IT ALL ON, GET ALL OF

03:37:03 19 THE SWITCHES CONFIGURED BECAUSE THEY DIDN'T USE ZTP, AMONG

03:37:06 20 OTHER THINGS.

03:37:07 21 Q. HOW WOULD THAT COMPARE TO A WAY OF PROVISIONING A NETWORK

03:37:11 22 OF THAT SIZE WITHOUT ZTP?

03:37:13 23 A. WELL, THE OLD WAY WAS TO PLUG A SWITCH IN, CONNECT A CABLE

03:37:17 24 TO IT, TYPE SOMETHING IN AT THE CONSOLE, AND THEN CHECK THAT IT

03:37:21 25 WAS PROPERLY CONFIGURED AND THEN MOVE ON TO THE NEXT ONE.

03:37:25 1 AND THIS PARTICULAR CUSTOMER TOLD US THAT IT HAD TAKEN  
03:37:28 2 THEM ABOUT TWO WEEKS THE LAST TIME THEY BROUGHT UP A DATA  
03:37:31 3 CENTER BEFORE THEY HAD DONE ALL THE WORK WITH ZTP.  
03:37:34 4 Q. OKAY. LAST ONE. OUR TIME IS LIMITED.  
03:37:37 5 CLOUD VISION. CAN YOU TELL US WHAT CLOUD VISION IS?  
03:37:39 6 A. YEAH. SO CLOUD VISION IS A FEATURE THAT ARISTA DEVELOPED  
03:37:43 7 TO MANAGE A CLOUD OF NETWORK SWITCHES. SO MANAGE A CLOUD  
03:37:51 8 NETWORK.  
03:37:52 9 SO CUSTOMERS THAT HAVE A LOT OF SWITCHES LIKE TO AUTOMATE  
03:37:57 10 THE MANAGEMENT OF THESE LARGE NUMBER OF SWITCHES. SO ONE OF  
03:38:00 11 THE THINGS THAT CLOUD VISION PROVIDES IS I CAN MAKE A  
03:38:05 12 CONFIGURATION CHANGE, I CAN SCHEDULE A CONFIGURATION CHANGE,  
03:38:09 13 TRACK THAT, GET IT APPROVED BECAUSE MAKING CONFIGURATION  
03:38:12 14 CHANGES IN THE LARGE NETWORK OFTEN REQUIRES SOME APPROVAL, GET  
03:38:16 15 IT APPROVED INSIDE THE APPLICATION, AND THEN PUSH ONE BUTTON  
03:38:19 16 AND HAVE THAT CONFIGURATION CHANGE APPLIED TO EVERY SINGLE  
03:38:23 17 SWITCH IN MY DATA CENTER. IT MIGHT BE EVERY TOP OF RACK IN THE  
03:38:27 18 DATA CENTER, FOR INSTANCE.  
03:38:30 19 ANOTHER ASPECT OF CLOUD VISION IS IT HAS AUTOMATED ROLL  
03:38:34 20 BACK. SO SOMETIMES NETWORK OPERATORS FIND THEMSELVES IN A  
03:38:38 21 SITUATION WHERE THEY ARE CONFIGURING A BIG NETWORK OVER A  
03:38:40 22 WEEKEND AND THEY HAVE TO BE DONE BY SUNDAY. AND THEY JUST  
03:38:44 23 DISCOVERED THAT SOMETHING WENT WRONG, SOMETHING FAILED OR A  
03:38:48 24 SWITCH FAILED OR THEY DIDN'T HAVE THE THING THEY NEEDED.  
03:38:51 25 CLOUD VISION HAS A ROLL BACK FEATURE WHERE I CAN ROLL BACK

03:38:55 1 TO WHERE I STARTED, I'M GOING TO TRY THIS AGAIN NEXT WEEKEND.

03:38:58 2 MR. FERRALL: I HAVE NO FURTHER QUESTIONS,

03:39:00 3 YOUR HONOR.

03:39:00 4 THE COURT: THANK YOU.

03:39:01 5 MR. NELSON, CROSS-EXAMINATION?

03:39:03 6 MR. NELSON: SURE. THANK YOU, YOUR HONOR.

03:39:29 7 **CROSS-EXAMINATION**

03:39:30 8 BY MR. NELSON:

03:39:39 9 Q. GOOD AFTERNOON, DR. HOLBROOK?

03:39:41 10 A. NOBODY CALLS ME DOCTOR. MR. HOLBROOK IS FINE.

03:39:44 11 Q. OKAY. I JUST WANT TO MAKE SURE I GET IT RIGHT.

03:39:46 12 THANK YOU, SIR.

03:39:47 13 SO WE HAVEN'T MET BEFORE. MY NAME IS DAVE NELSON AND I

03:39:51 14 REPRESENT CISCO IN THE CASE, AND I JUST HAVE A FEW QUESTIONS

03:39:53 15 FOR YOU, OKAY?

03:39:54 16 A. OKAY.

03:39:54 17 Q. CAN YOU TURN TO EXHIBIT 6095 IN YOUR BINDER. IT SHOULD BE

03:39:59 18 IN FRONT OF YOU.

03:40:01 19 MR. FERRALL: SORRY, COUNSEL, I DIDN'T GET A BINDER.

03:40:04 20 MR. NELSON: IT'S YOUR BINDER, THE ONE YOU ASKED

03:40:07 21 FROM.

03:40:07 22 MR. FERRALL: OH, THANK YOU.

03:40:08 23 MR. NELSON: THE ONE YOUR COUNSEL GAVE YOU.

03:40:11 24 THE WITNESS: 6095.

03:40:19 25 Q. 6095.

03:40:20 1 A. OH, OKAY. OKAY.

03:40:25 2 Q. ARE YOU THERE?

03:40:26 3 A. YEAH.

03:40:27 4 Q. SO THIS IS, AND WE'VE HEARD A BIT ABOUT THIS, I THINK

03:40:30 5 TODAY, THIS IS AN ARISTA PRESENTATION SUMMARIZING A NETWORK

03:40:36 6 WORLD TEST REPORT FROM 2010; IS THAT RIGHT?

03:40:40 7 A. THAT COULD BE, I MEAN, I WOULD HAVE TO LOOK AT IT.

03:40:45 8 MR. FERRALL: OBJECTION, YOUR HONOR. OUTSIDE THE

03:40:46 9 SCOPE.

03:40:48 10 THE COURT: ARE YOU GOING TO RELATE IT TO THE DIRECT?

03:40:50 11 MR. NELSON: SURE. HE TALKED ABOUT EXTENSIBILITY AND

03:40:53 12 THINGS LIKE THAT THAT ARE IN THERE.

03:40:54 13 THE COURT: OKAY. PLEASE GO AHEAD. OVERRULED.

03:40:56 14 MR. NELSON: OKAY.

03:40:57 15 Q. SO SIR, IF YOU LOOK AT THIS DOCUMENT AS ONE OF THE

03:41:03 16 DOCUMENTS THAT YOUR COUNSEL SAID YOU WERE A SPONSORING WITNESS

03:41:06 17 FOR; DO YOU UNDERSTAND THAT?

03:41:07 18 A. OKAY.

03:41:07 19 Q. SO AT THIS POINT I MOVE 6095 INTO EVIDENCE YOUR HONOR?

03:41:11 20 THE COURT: ANY OBJECTION?

03:41:12 21 MR. FERRALL: NO OBJECTION.

03:41:13 22 THE COURT: IT WILL BE ADMITTED.

03:41:14 23 (PLAINTIFF'S EXHIBIT 6095 WAS ADMITTED INTO EVIDENCE.)

03:41:14 24 BY MR. NELSON:

03:41:16 25 Q. SO NOW IF YOU GO TO THE SECOND PAGE OF THAT PRESENTATION?

03:41:24 1 A. OKAY.

03:41:24 2 Q. AND YOU WILL SEE, THIS IS ARISTA'S SUMMARY OF THIS

03:41:28 3 *NETWORK WORLD TEST RESULTS, CORRECT?*

03:41:30 4 A. IT LOOKS LIKE IT, YEAH.

03:41:33 5 Q. YEAH. SO FOR EXAMPLE, IT SAYS ARISTA 7100 RATED BEST

03:41:37 6 PRODUCT; DO YOU SEE THAT?

03:41:38 7 A. UH-HUH.

03:41:39 8 Q. OKAY. AND YOU TALKED ABOUT THAT PRODUCT EARLIER, THE ONE

03:41:43 9 THAT WAS IN, AROUND THE 2010 TIMEFRAME; IS THAT RIGHT?

03:41:48 10 A. I'M NOT SURE WHICH ONE THIS WAS RATING, THAT ONE OVER

03:41:53 11 THERE WAS A 2008 PRODUCT. I'M NOT SURE, BUT, OKAY.

03:41:57 12 Q. YOU HAD MENTIONED IN YOUR DIRECT, THE 7500, I'M JUST

03:42:00 13 TRYING TO GET HOW THE 7500 SWITCH RELATES TO THE 7100 THAT'S --

03:42:07 14 A. OH, OKAY.

03:42:08 15 Q. ARE THEY THE SAME MODEL JUST -- SAME FAMILY?

03:42:11 16 A. THE 7500 IS THE CHASSIS WITH A DIFFERENT CHIP SET AND THE

03:42:16 17 7100 IS THE PIZZA BOX, THE FIXED CONFIGURATION.

03:42:18 18 Q. OKAY. SO THAT'S THE SECOND ONE YOU TALKED ABOUT?

03:42:24 19 A. SORRY, THAT?

03:42:25 20 Q. THE 7100?

03:42:28 21 A. THE 7100 IS THE PIZZA BOX.

03:42:30 22 Q. OKAY. SO NOW, SIR, IF YOU GO TO THE NINTH PAGE OF THAT,

03:42:48 23 AND YOU WILL SEE THAT THERE'S A COMPARISON HERE, ARISTA'S

03:42:51 24 SUMMARY OF THE ARISTA 7100 VERSUS AN HP SWITCH; DO YOU SEE

03:42:55 25 THAT?

03:42:56 1 A. OKAY.

03:42:58 2 Q. RIGHT. SO THE FIRST THING THERE IS ARISTA SAYING WE HAVE

03:43:02 3 ULTRALOW LATENCY 600 TO 700 NANoseconds; IS THAT RIGHT?

03:43:08 4 A. YES.

03:43:08 5 Q. AND THEN OVER ON THE HP SIDE, IN COMPARISON YOU SAY, IT'S

03:43:14 6 GOT HIGH LATENCY, I BELIEVE THAT'S 29 MICROSECONDS; IS THAT

03:43:19 7 RIGHT?

03:43:19 8 A. YES.

03:43:19 9 Q. SO THEN THE NEXT THING IT SAYS IS ARISTA 7100 HAS IOS-LIKE

03:43:24 10 CLI; RIGHT?

03:43:25 11 A. I SEE IT SAYS THAT.

03:43:26 12 Q. AND THAT WAS TRUE, YOUR UNDERSTANDING IS THAT THE SWITCHES

03:43:30 13 BACK IN THIS 2010 TIMEFRAME HAD WHAT WOULD BE REFERRED TO AS AT

03:43:34 14 LEAST AN IOS-LIKE CLI; RIGHT?

03:43:37 15 A. YEAH, LIKE MANY SWITCHES.

03:43:40 16 Q. OKAY. AND THEN IF YOU LOOK OVER HERE, AT LEAST ACCORDING

03:43:44 17 TO ARISTA'S SUMMARY ON THE RIGHT IT SAYS IT'S NOT CONSISTENT

03:43:50 18 WITH IOS?

03:43:50 19 A. I SEE THIS DOCUMENT, IT SAYS THAT.

03:43:52 20 Q. SO AT LEAST THE HP 6600 SWITCH DIDN'T HAVE AN IOS-LIKE

03:43:57 21 CLI; RIGHT?

03:43:57 22 A. I SEE THIS DOCUMENT SAYS THAT.

03:43:59 23 Q. RIGHT. AND YOU DIDN'T DO ANY INDEPENDENT ANALYSIS OF WHAT

03:44:03 24 OTHER VENDORS'S CLI'S WERE; RIGHT, IN THIS 2010 TIMEFRAME?

03:44:08 25 A. NO.

03:44:08 1 Q. RIGHT. SO YOU DON'T HAVE ANY BASIS TO DISPUTE WHAT'S  
03:44:13 2 CONTAINED IN THE RESULT OF THE SUMMARIES; RIGHT?  
03:44:14 3 A. I WOULDN'T KNOW ONE WAY OR THE OTHER HERE.  
03:44:18 4 Q. OKAY. SO NOW IF WE GO TO THE NEXT PAGE OF THAT DOCUMENT  
03:44:21 5 WHICH I BELIEVE IS PAGE 10, FOR THE RECORD I'M IN 6095,  
03:44:26 6 EXHIBIT 6095?  
03:44:27 7 THE COURT: THANK YOU.  
03:44:28 8 MR. NELSON: YOU WILL SEE ONCE AGAIN, AT THE SECOND  
03:44:31 9 LINE FOR THE ARISTA 7100, IT SAYS IOS-LIKE CLI.  
03:44:37 10 DO YOU SEE THAT?  
03:44:38 11 A. YES.  
03:44:38 12 Q. WHICH IS CONSISTENT WITH THE EARLIER DESCRIPTION WE SAW OF  
03:44:41 13 THE ARISTA 7100?  
03:44:43 14 A. I SEE IT SAYS THAT.  
03:44:44 15 Q. NOW FOR THE EXTREME X650, WHICH YOU UNDERSTAND TO BE AN  
03:44:51 16 EXTREME SWITCH; IS THAT RIGHT?  
03:44:52 17 A. YES.  
03:44:52 18 Q. AND EXTREME IS A COMPANY THAT WAS A COMPETITOR OF ARISTA  
03:44:56 19 BACK IN THIS 2010 TIMEFRAME?  
03:44:58 20 A. YES, I BELIEVE SO.  
03:44:59 21 Q. AND THE DOCUMENT 6095 SAYS, ONCE AGAIN NOT CONSISTENT WITH  
03:45:03 22 IOS; RIGHT?  
03:45:04 23 A. IT SAYS THAT, YES.  
03:45:05 24 Q. SO ACCORDING TO THIS DOCUMENT THE EXTREME X650 DIDN'T HAVE  
03:45:09 25 AN IOS-LIKE CLI, CORRECT?

03:45:11 1 A. THIS IS NOT CONSISTENT WITH IOS. I AGREE.

03:45:13 2 Q. OKAY. SO NOW IF I GO TO PAGE 12 OF THE DOCUMENT, EXHIBIT

03:45:25 3 6095, YOU WILL SEE THERE'S A REFERENCE HERE -- OR EXCUSE ME, A

03:45:29 4 COMPARISON HERE TO A DELL POWERCONNECT SWITCH; DO YOU SEE THAT?

03:45:33 5 A. I DO SEE THAT.

03:45:34 6 Q. AND DELL WAS ANOTHER COMPANY AT LEAST BACK IN THIS 2010

03:45:37 7 TIMEFRAME THAT WAS A COMPETITOR OF ARISTA'S MADE NETWORK

03:45:43 8 SWITCHES; RIGHT?

03:45:44 9 A. THEY MADE NETWORK SWITCHES, YES.

03:45:46 10 Q. AND SO HERE AGAIN GOING TO THE SECOND LINE FOR THE ARISTA

03:45:49 11 7100, ONCE AGAIN WE SEE "IOS-LIKE CLI;" DO YOU SEE THAT?

03:45:52 12 A. YES.

03:45:53 13 Q. AND THEN FOR THE DELL SWITCH, AT LEAST FOR THE

03:45:57 14 POWERCONNECT 8024 IT SAYS, NOT CONSISTENT WITH IOS; RIGHT?

03:46:01 15 A. YES.

03:46:02 16 Q. SO JUST A FEW MORE QUESTIONS FOR YOU, SIR.

03:46:06 17 SO YOU CAN PUT 6095 ASIDE. SO YOU ARE NOT AWARE OF ANY

03:46:21 18 ANALYSIS AT ARISTA OF OTHER EQUIPMENT VENDORS AND HOW OFTEN

03:46:25 19 THEY USE ANY PARTICULAR CLI COMMAND; ISN'T THAT RIGHT?

03:46:28 20 A. NO, I'M NOT AWARE.

03:46:30 21 Q. AND YOU WERE THE FIFTH EMPLOYEE, I THINK YOU SAID AT

03:46:33 22 ARISTA; IS THAT RIGHT?

03:46:35 23 A. SOMETHING LIKE THAT.

03:46:36 24 Q. OKAY. SO I WANT TO TALK TO YOU A BIT ABOUT THE STANDARDS.

03:46:43 25 YOU TALKED ABOUT THE IETF; DO YOU RECALL THAT?

03:46:47 1 A. CORRECT.

03:46:47 2 Q. AND YOU HAD, YOU SHOWED US AN EXAMPLE OF AN RFC THAT YOU

03:46:51 3 SUBMITTED; RIGHT?

03:46:52 4 A. YES.

03:46:53 5 Q. AND THE ITEF, THAT GENERALLY CONCERNS LIKE PROTOCOLS AND

03:46:57 6 THINGS LIKE THAT; RIGHT?

03:47:02 7 A. AMONG OTHER THINGS, YES.

03:47:03 8 Q. IN OTHER WORDS HOW THE DATA MIGHT BE FORMATTED TO PASS IT

03:47:06 9 BACK AND FORTH BETWEEN EQUIPMENT, THINGS LIKE THAT?

03:47:09 10 A. THINGS LIKE THAT.

03:47:10 11 Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS SETTING ORGANIZATION

03:47:14 12 THAT HAS STANDARDIZED WHAT A COMMAND-LINE INTERFACE WOULD BE;

03:47:20 13 RIGHT?

03:47:20 14 A. NO, I'M NOT.

03:47:21 15 Q. AND THIS ITEF, OF WHICH YOU ARE A MEMBER I TAKE IT; RIGHT?

03:47:28 16 A. MEMBER SHIP ISN'T REALLY AN EVENT WITH THE ITEF, YOU

03:47:32 17 BECOME A MEMBER BY GOING.

03:47:33 18 Q. SO YOU GO TO THE MEETINGS?

03:47:35 19 A. WELL, I DON'T THINK I HAVE BEEN SINCE 2005.

03:47:38 20 Q. OKAY. YOU WENT TO SOME OF THE MEETINGS?

03:47:41 21 A. I DID.

03:47:41 22 Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS THAT THE ITEF HAS

03:47:45 23 ISSUED CONCERNING COMMAND-LINE INTERFACES; RIGHT?

03:47:47 24 A. NO, I'M NOT AWARE OF ANY.

03:47:49 25 Q. NOW, YOU'RE AWARE THAT JUNIPER HAS A CLI THAT'S PRETTY

03:47:56 1 DIFFERENT FROM ARISTA'S CLI; RIGHT?

03:47:59 2 A. IT'S DIFFERENT IN SOME NOTABLE WAYS.

03:48:04 3 Q. DIFFERENT IN SOME IMPORTANT WAYS, CORRECT?

03:48:06 4 A. I THINK IT'S DIFFERENT IN NOTABLE WAYS, YES.

03:48:11 5 Q. ARE YOU DRAWING A DISTINCTION BETWEEN NOTABLE AND

03:48:14 6 IMPORTANT?

03:48:15 7 A. IT'S NOTABLY DIFFERENT, I'M NOT SURE WHAT THE MEASURE OF

03:48:19 8 IMPORTANCE IS.

03:48:20 9 Q. I'M JUST GOING BY WHAT YOU INSIDE YOUR DEPO, I JUST WANT

03:48:24 10 TO KNOW IF YOU'RE MAKING A DISTINCTION BETWEEN NOTABLE AND

03:48:27 11 IMPORTANT?

03:48:27 12 MR. FERRALL: OBJECTION, YOUR HONOR. THIS LINE IS

03:48:29 13 OUTSIDE THE SCOPE.

03:48:30 14 THE COURT: SUSTAINED. LET'S MOVE ON.

03:48:31 15 BY MR. NELSON:

03:48:33 16 Q. SO YOU AGREE THOUGH, THAT A COMMAND-LINE INTERFACE IS AN

03:48:37 17 IMPORTANT PART OF A PRODUCT; RIGHT?

03:48:39 18 A. I MEAN, I THINK A PRODUCT NEEDS A COMMAND-LINE INTERFACE.

03:48:42 19 Q. RIGHT. IN FACT, YOU BELIEVE THAT A NETWORKING PRODUCT

03:48:46 20 CAN'T BE SUCCESSFUL IF IT DOESN'T HAVE A COMMAND-LINE

03:48:49 21 INTERFACE; RIGHT?

03:48:50 22 A. I THINK IT WOULD BE HARDER FOR A PRODUCT TO BE SUCCESSFUL

03:48:52 23 IN OUR SPACE WITHOUT A COMMAND-LINE INTERFACE.

03:48:54 24 Q. ALL RIGHT.

03:48:55 25 MR. NELSON: THANK YOU, SIR.

03:48:55 1 I DON'T HAVE ANY FURTHER QUESTIONS FOR YOU.

03:48:57 2 THE COURT: THANK YOU.

03:48:57 3 MR. FERRALL, DID YOU HAVE REDIRECT?

03:49:00 4 **REDIRECT EXAMINATION**

03:49:01 5 BY MR. FERRALL:

03:49:08 6 Q. MR. HOLBROOK, FOR AS LONG AS YOU'VE BEEN AT ARISTA, DID

03:49:13 7 ARISTA EVER TRY TO HIDE THAT IT HAD A CISCO-LIKE CLI?

03:49:18 8 A. NO.

03:49:21 9 Q. I JUST WANT TO LOOK AT ONE PAGE FROM EXHIBIT 6095, PAGE 5,

03:49:29 10 PLEASE. DO YOU SEE THAT ON THE SCREEN?

03:49:40 11 A. YES, I DO.

03:49:41 12 Q. DO YOU KNOW WHAT THIS PAGE IS DISPLAYING OR DISCUSSING?

03:49:49 13 A. YEAH, IT LOOKS LIKE IT'S COMPARING THE 7124 TO OTHER

03:49:53 14 PRODUCTS.

03:49:54 15 Q. AND DO YOU UNDERSTAND THESE WERE THE RESULTS OF THE

03:49:57 16 INDEPENDENT TESTING THAT NETWORK WORLD PERFORMED IN 2010?

03:50:02 17 A. YEAH, THAT'S HOW I INTERPRETED THIS.

03:50:04 18 MR. FERRALL: THANK YOU.

03:50:05 19 NO FURTHER QUESTIONS YOUR HONOR.

03:50:06 20 THE COURT: ANYTHING ELSE, MR. NELSON?

03:50:07 21 MR. NELSON: NOTHING FURTHER.

03:50:08 22 HE MAY BE EXCUSED, YOUR HONOR.

03:50:10 23 THE COURT: THANK YOU, MR. HOLBROOK, THANK YOU FOR

03:50:12 24 YOUR TESTIMONY. YOU MAY STEP DOWN. I GUESS YOU ARE EXCUSED AS

03:50:15 25 WELL.

03:50:15 1 I THINK I WANT TO TAKE ONE OTHER SHORT BREAK BEFORE WE --  
03:50:18 2 BECAUSE OTHERWISE I WILL BREAK UP ANOTHER WITNESS, IF THAT'S  
03:50:21 3 OKAY. LET'S TAKE ANOTHER TEN-MINUTE BREAK.  
03:50:25 4 (RECESS FROM 3:50 P.M. UNTIL 4:00 P.M.)  
04:01:01 5 THE COURT: PLEASE BE SEATED. ALL OF OUR JURORS ARE  
04:01:32 6 HERE.  
04:01:32 7 ALL RIGHT. ARE YOU READY TO CALL YOUR NEXT WITNESS?  
04:01:36 8 MR. WONG: YES, YOUR HONOR. ARISTA IS CALLING  
04:01:39 9 MR. ANTHONY LI.  
04:01:52 10 THE COURT: OKAY.  
04:01:59 11 IF YOU WOULD COME FORWARD TO THE WITNESS STAND, PLEASE AND  
04:02:02 12 STAND TO BE SWORN.  
04:02:04 13 (**PLAINTIFF'S WITNESS, ANTHONY LI, WAS SWORN.**)  
04:02:05 14 THE WITNESS: YES.  
04:02:15 15 THE CLERK: THANK YOU.  
04:02:18 16 MR. WONG: YOUR HONOR, MAY I APPROACH?  
04:02:19 17 THE COURT: YES, PLEASE.  
04:02:20 18 THE CLERK: IF YOU WOULD PLEASE STATE YOUR NAME AND  
04:02:25 19 SPELL YOUR LAST NAME FOR THE RECORD.  
04:02:26 20 THE WITNESS: ANTHONY JOSEPH LI. LAST NAME IS LI.  
04:02:30 21 **DIRECT EXAMINATION**  
04:02:31 22 BY MR. WONG:  
04:02:31 23 Q. GOOD AFTERNOON, SIR.  
04:02:32 24 WE LAST MET AT YOUR DEPOSITION BACK IN FEBRUARY, BUT I  
04:02:36 25 WILL REINTRODUCE MYSELF. MY NAME IS RYAN WONG, AND I'M ONE OF

04:02:39 1 THE ATTORNEYS FOR ARISTA.

04:02:40 2 WOULD YOU PLEASE INTRODUCE YOURSELF FOR THE JURY.

04:02:42 3 A. MY NAME IS ANTHONY JOSEPH LI. I'M A FORMER EMPLOYEE OF

04:02:46 4 CISCO SYSTEMS.

04:02:47 5 Q. AND MR. LI, DO YOU LIVE IN THE AREA?

04:02:49 6 A. I DO.

04:02:50 7 Q. AND ARE YOU CURRENTLY EMPLOYED?

04:02:52 8 A. I AM.

04:02:52 9 Q. WHERE ARE YOU CURRENTLY EMPLOYED, SIR?

04:02:54 10 A. PELOTON TECHNOLOGY.

04:02:55 11 Q. AND WHAT DO YOU DO FOR PELOTON TECHNOLOGIES?

04:02:59 12 A. I'M THE DIRECTOR OF PLATFORM SOFTWARE.

04:03:02 13 Q. SO DO YOU WRITE SOFTWARE FOR PELOTON?

04:03:04 14 A. I DO.

04:03:04 15 Q. HAVE YOU WORKED AT OTHER COMPANIES BESIDES PELOTON? I

04:03:08 16 KNOW YOU MENTIONED CISCO?

04:03:09 17 A. SEVERAL. JUNIPER NETWORKS, PROCTER NETWORKS.

04:03:13 18 THE COURT: MR. LI, I'M GOING TO NEED YOU TO SPEAK UP

04:03:15 19 A LITTLE BIT. I KNOW YOUR CHAIR DOESN'T MOVE, BUT YOUR

04:03:19 20 MICROPHONE DOES.

04:03:20 21 THE WITNESS: JUNIPER NETWORKS AND PROCTER NETWORKS.

04:03:23 22 Q. ARE THOSE COMPANIES IN THE SWITCH AND ROUTER INDUSTRY?

04:03:25 23 A. YES, THEY ARE.

04:03:26 24 Q. HAVE YOU WORKED IN ANY OTHER COMPANIES IN THE SWITCH AND

04:03:28 25 ROUTER INDUSTRIES BESIDES THE ONES YOU JUST LISTED?

04:03:31 1 A. ERICSSON.

04:03:33 2 Q. HAVE YOU EVER WORKED AT ARISTA NETWORKS?

04:03:35 3 A. NO, I HAVE NOT.

04:03:36 4 Q. COULD YOU PLEASE TELL THE JURY YOUR EDUCATIONAL

04:03:40 5 BACKGROUND, PLEASE?

04:03:40 6 A. I HAVE A BACHELOR'S IN MATHEMATICS FROM HARVEY MUDD

04:03:48 7 COLLEGE, AND A PH.D. IN COMPUTER SCIENCE FROM USC.

04:03:53 8 Q. AND WHEN DID YOU OBTAIN THOSE DEGREES, MR. LI?

04:03:56 9 A. HARVEY MUDD WAS 1982, AND USC WAS 1990.

04:04:00 10 Q. NOW SAID YOU THAT YOU HAD PREVIOUSLY WORKED FOR CISCO,

04:04:05 11 CORRECT?

04:04:05 12 A. YES.

04:04:06 13 Q. WHEN DID YOU FIRST JOIN CISCO AS AN EMPLOYEE, MR. LI?

04:04:09 14 A. 1991.

04:04:10 15 Q. OKAY. AND WHAT WAS YOUR TITLE WHEN YOU JOINED CISCO IN

04:04:14 16 1991?

04:04:14 17 A. I BELIEVE IT WAS SOFTWARE ENGINEER 1.

04:04:17 18 Q. AND HOW LONG DID YOU WORK AT CISCO WHEN YOU JOINED BACK IN

04:04:22 19 1991?

04:04:23 20 A. SO I'VE WORKED FOR CISCO FOR FOUR DIFFERENT OCCASIONS.

04:04:28 21 THAT FIRST OCCASION WAS FOR FIVE YEARS.

04:04:30 22 Q. AND WE WILL GET BACK TO THE OTHER TIMES THAT YOU WORKED AT

04:04:33 23 CISCO.

04:04:34 24 WELL ACTUALLY, HOW RECENTLY WERE YOU AN EMPLOYEE AT CISCO,

04:04:38 25 MR. LI?

04:04:39 1 A. I BELIEVE THE LAST TIME ENDED IN 2013.

04:04:42 2 Q. SO LET'S TALK A BIT ABOUT THE FIRST TIME THAT YOU WORKED

04:04:48 3 AT CISCO AND THAT WAS STARTING IN 1991, CORRECT?

04:04:50 4 A. YES.

04:04:51 5 Q. OKAY. AND YOU SAID YOU WORKED THERE FOR ABOUT FIVE YEARS?

04:04:54 6 A. YES, THAT'S CORRECT.

04:04:55 7 Q. SO THAT WOULD BE 1991 TO 1996?

04:04:58 8 A. YES.

04:04:58 9 Q. NOW WHEN YOU JOINED CISCO IN 1991, WHAT PRODUCTS DID

04:05:02 10 YOU WORK ON?

04:05:04 11 A. PRIMARILY, I WORKED ON IOS, THE OPERATING SYSTEM FOR THE

04:05:09 12 CISCO ROUTERS.

04:05:10 13 Q. DID THAT ROUTER YOU WORK ON HAVE A NAME?

04:05:12 14 A. THERE WERE SEVERAL OF THE ROUTERS THAT I ENDED UP WORKING

04:05:16 15 ON. THE FIRST WAS THE AGS PLUS. THERE WAS ALSO AN MGS, A CGS,

04:05:22 16 AND A 7000.

04:05:23 17 Q. OKAY. AND AGAIN, WE ARE STILL TALKING ABOUT THE 1991 TO

04:05:27 18 1996 TIME PERIOD; RIGHT?

04:05:29 19 A. THAT'S CORRECT.

04:05:29 20 Q. NOW DURING THAT TIME PERIOD, MR. LI, YOU SAID YOU WORKED

04:05:33 21 WITH THE IOS OPERATING SYSTEM, CORRECT?

04:05:36 22 A. YES.

04:05:37 23 Q. HOW FAMILIAR DID YOU BECOME DURING THAT FIRST PERIOD OF

04:05:42 24 TIME WHERE YOU WORKED AT CISCO WITH THE CISCO IOS CLI?

04:05:46 25 A. VERY FAMILIAR.

04:05:47 1 Q. OKAY. AND HOW FAMILIAR DID YOU BECOME WITH THE COMPONENTS  
04:05:52 2 OF THE CISCO IOS CLI SUCH AS THE MODES AND PROMPTS AND THE  
04:05:58 3 COMMAND SET?  
04:05:59 4 A. VERY, VERY FAMILIAR.  
04:06:00 5 Q. CAN YOU DESCRIBE TO THE JURY A LITTLE BIT OF THE TYPE OF  
04:06:05 6 WORK THAT YOU WERE DOING AT CISCO DURING THAT TIME PERIOD  
04:06:08 7 BETWEEN 1991 AND 1996?  
04:06:11 8 A. I HAD SEVERAL PROJECTS. MANY OF THEM WERE IN THE ROUTING  
04:06:14 9 PROTOCOLS AREA WHERE I WAS DEVELOPING ROUTING PROTOCOLS FOR IP  
04:06:21 10 ROUTING.  
04:06:22 11 Q. COULD YOU TELL THE JURY SOME OF THE ROUTING PROTOCOLS THAT  
04:06:25 12 YOU WERE WORKING ON DURING IN 1991 TO 1996 TIME PERIOD AT  
04:06:29 13 CISCO?  
04:06:30 14 A. THAT INCLUDED RIP, IGRP, OSPF, ISIS AND BGP.  
04:06:39 15 Q. AND ALL OF THOSE STANDARDS THAT YOU JUST LISTED, MR. LI,  
04:06:43 16 ARE ALL OF THOSE INDUSTRY STANDARDS?  
04:06:44 17 A. NO, IGRP IS CISCO PROPRIETARY.  
04:06:49 18 Q. AND THE OTHER ONES YOU LISTED BGP, ISIS, ARE THOSE  
04:06:53 19 INDUSTRY STANDARDS?  
04:06:54 20 A. THOSE ARE INDUSTRY STANDARDS.  
04:06:54 21 Q. AND DO YOU KNOW WHAT THE STANDARD SETTING BODY IS FOR  
04:06:57 22 THOSE INDUSTRY STANDARDS THAT WE JUST MENTIONED?  
04:06:59 23 A. I DO. IGRP, OSPF AND BGP ARE STANDARDS OUT OF THE  
04:07:04 24 INTERNET ENGINEERING TASK FORCE. ISIS IS THE STANDARD OUT OF  
04:07:09 25 THE OSI GROUP.

04:07:10 1 Q. OKAY. AND MR. LI, HAVE YOU PERSONALLY BEEN INVOLVED IN  
04:07:14 2 ANY OF THE STANDARD SETTING PROCESSES FOR THESE NETWORKING  
04:07:19 3 PROTOCOLS?  
04:07:19 4 A. YES, I HAVE. I HAVE BEEN INVOLVED IN THE BGP WORKING  
04:07:23 5 GROUP, IN THE ISIS WORKING GROUP, AND I'VE DONE SOME STUFF WITH  
04:07:29 6 RIP.  
04:07:31 7 Q. WHEN WAS YOUR FIRST EXPOSURE TO THE CISCO IOS CLI?  
04:07:36 8 A. I FIRST BECAME FAMILIAR WITH THE CISCO CLI AS A CISCO  
04:07:40 9 CUSTOMER IN 1987. I WAS EMPLOYED AT USC AS A NETWORK MANAGER  
04:07:46 10 AND WE HAD A CISCO BOX THERE.  
04:07:48 11 Q. AND IS THAT USC THE UNIVERSITY OF SOUTHERN CALIFORNIA?  
04:07:51 12 A. YES, IN LOS ANGELES.  
04:07:54 13 Q. OKAY. WAS THE CISCO IOS CLI THAT YOU USED AT USC, WAS  
04:08:00 14 THAT THE FIRST COMMAND-LINE INTERFACE THAT YOU USED?  
04:08:02 15 A. NO, I USED MANY OF THEM BEFORE THAT.  
04:08:04 16 Q. OKAY. WHAT OTHER CLI'S DID YOU USE BEFORE YOU USED THE  
04:08:11 17 CISCO IOS CLI?  
04:08:13 18 A. I HAD USED TOPS 20, TOPS 10, CPM, RSTS, MANY OTHERS.  
04:08:22 19 Q. AND ARE ANY OF THOSE PRODUCTS THAT YOU JUST NAMED, ARE ANY  
04:08:28 20 OF THOSE CISCO PRODUCTS?  
04:08:30 21 A. NO, NONE OF THEM ARE.  
04:08:31 22 Q. DO YOU KNOW WHO THE MANUFACTURER IS FOR THOSE CLI'S THAT  
04:08:35 23 YOU HAD USED BEFORE YOU STARTED USING THE CISCO IOS CLI?  
04:08:38 24 A. YES. SEVERAL OF THOSE ARE, WERE THE PRODUCT OF DIGITAL  
04:08:43 25 EQUIPMENT CORPORATION, CPM WAS A PRODUCT OF DIGITAL RESEARCH.

04:08:48 1 Q. AND IS DIGITAL EQUIPMENT CORPORATION, ARE THEY ALSO CALLED  
04:08:59 2 DEC?  
04:08:59 3 A. YES.  
04:08:59 4 Q. DID YOU EVER ANY OTHER EXPERIENCE WORKING WITH DEC CLI'S  
04:09:03 5 BESIDES TOPS 20 AND TOPS 10?  
04:09:05 6 A. THERE WAS ANOTHER OPERATING SYSTEM KNOWN AS 10X WHICH RAN  
04:09:10 7 ON DEC HARDWARE BUT WAS PRODUCED BY ANOTHER COMPANY.  
04:09:13 8 Q. OF ALL THOSE CLI'S THAT YOU JUST MENTIONED, WHICH OF THEM  
04:09:19 9 EXISTED PRIOR TO 1985?  
04:09:23 10 A. I BELIEVE ALL OF THEM DID.  
04:09:24 11 Q. HAVE YOU EVER USED THE DEC VMS CLI?  
04:09:31 12 A. I HAVE.  
04:09:32 13 Q. OKAY. AND DO YOU KNOW WHEN YOU FIRST STARTED USING THE  
04:09:35 14 DEC VMS CLI?  
04:09:37 15 A. APPROXIMATELY 1981.  
04:09:41 16 Q. AND WAS THAT ALSO WHEN YOU WERE WORKING AT THE UNIVERSITY  
04:09:44 17 OF SOUTHERN CALIFORNIA, MR. LI?  
04:09:46 18 A. NO, THAT WAS WHILE I WAS A STUDENT AT HARVEY MUDD, I HAD A  
04:09:53 19 780 RUNNING VMS.  
04:09:54 20 Q. AND PRIOR TO JOINING CISCO IN 1991, ABOUT HOW MANY YEARS  
04:09:59 21 EXPERIENCE DID YOU HAVE USING THE DEC VMS CLI?  
04:10:03 22 A. PROBABLY ABOUT EIGHT YEARS.  
04:10:08 23 Q. CAN YOU DESCRIBE TO THE JURY THE KINDS OF COMMANDS THAT  
04:10:13 24 THE DEC VMS CLI SUPPORTED?  
04:10:16 25 A. THE DEC VMS CLI HAD MANY DIFFERENT CLI COMMANDS. PROBABLY

04:10:24 1 THE MOST COMMON ONE WAS THE "SHOW" COMMAND. THIS WAS USED FOR  
04:10:28 2 DISPLAYING INFORMATION.

04:10:29 3 Q. AND WERE THE VMS COMMANDS, WERE THEY SINGLE COMMANDS OR  
04:10:39 4 MULTIWORD COMMANDS?

04:10:40 5 A. THEY WERE MULTIWORD COMMANDS SUCH AS "SHOW VERSION."

04:10:43 6 Q. BESIDES "SHOW VERSION" THAT YOU JUST MENTIONED, WERE THERE  
04:10:46 7 ANY OTHER SHOW COMMANDS THAT YOU RECALL BEING SUPPORTED BY THE  
04:10:51 8 VMS CLI?

04:10:51 9 A. I'M SORRY, I DON'T RECALL.

04:10:53 10 Q. WERE THERE MORE SHOW COMMANDS THAN JUST "SHOW VERSION?"

04:10:57 11 A. THERE WERE MANY.

04:10:58 12 Q. AND AGAIN, THE TIME PERIOD THAT WE ARE TALKING ABOUT HERE,  
04:11:00 13 WAS THIS 1981?

04:11:02 14 A. 1981, PROBABLY UP THROUGH ABOUT '87, '88.

04:11:06 15 Q. WAS THERE A PARTICULAR SYNTAX THAT THE DEC VMS SHOW  
04:11:14 16 COMMANDS FOLLOWED?

04:11:14 17 A. YES. IT WAS TYPICALLY VERB OBJECT, AND THEN OPTIONS AFTER  
04:11:21 18 THAT.

04:11:21 19 Q. AND SO BY VERB, OBJECT AND OPTIONS, THE VERB FOR THE SHOW  
04:11:26 20 COMMANDS IS THE "SHOW" WORD, CORRECT?

04:11:28 21 A. CORRECT.

04:11:28 22 Q. AND OF THE MANY SHOW COMMANDS THAT WERE SUPPORTED IN THE  
04:11:34 23 VMS CLI AS YOU JUST TESTIFIED, DID THEY ALL FOLLOW THAT  
04:11:38 24 PARTICULAR SYNTAX?

04:11:39 25 A. THEY TRIED TO.

04:11:40 1 Q. DID MOST OF THEM FOLLOW THAT SYNTAX?

04:11:42 2 A. MOST OF THEM.

04:11:43 3 Q. AND I THINK YOU MENTIONED THAT YOU HAD USED THE TOPS 20

04:11:51 4 CLI; IS THAT RIGHT?

04:11:52 5 A. YES.

04:11:52 6 Q. AND WHEN DID YOU FIRST START USING THE TOPS 20 CLI?

04:11:56 7 A. I FIRST STARTED USING THAT IN 1982 AS A GRAD STUDENT AT

04:12:03 8 ROCKHURST UNIVERSITY, AND I HAD AN ACCOUNT ON A TOPS 20 SYSTEM

04:12:07 9 THERE.

04:12:07 10 Q. AND THAT'S A CLI MADE BY DEC, CORRECT?

04:12:11 11 A. YES.

04:12:11 12 Q. AND PRIOR TO JOINING CISCO, APPROXIMATELY HOW MANY YEARS

04:12:15 13 DID YOU USE THE TOPS 20 CLI AS A USER?

04:12:19 14 A. APPROXIMATELY EIGHT YEARS.

04:12:20 15 Q. MR. LI, WAS THE TOPS 20 CLI SIMILAR AT ALL TO THE VMS CLI?

04:12:28 16 A. IT HAD SOME INTERCEPTIONS, BUT THERE WERE MANY THINGS THAT

04:12:35 17 WERE VERY DIFFERENT.

04:12:35 18 Q. CAN YOU EXPLAIN OR DO YOU RECALL ANY OF THE DIFFERENCES

04:12:39 19 BETWEEN THE VMS CLI AND THE TOPS 20 CLI?

04:12:42 20 A. THE TOPS 20 INCLUDES COMMANDS LIKE "COMPLETION" AND "HELP"

04:12:45 21 THAT WERE NOT PRESENT IN THE VMS CLI.

04:12:47 22 Q. WHEN YOU SAY "COMMAND COMPLETION," WHAT DO YOU MEAN BY

04:12:50 23 THAT?

04:12:50 24 A. IT MEANS THAT YOU COULD TYPE IN AN ESCAPE CHARACTER AND

04:12:54 25 THE CLI WOULD COMPLETE THE COMMANDS IF YOU HAD ONLY PARTIALLY

04:12:58 1 TYPED THE WORD.

04:12:58 2 Q. AND WHEN YOU MENTION THE HELP SYSTEM, WHAT DID YOU MEAN BY

04:13:02 3 THAT?

04:13:02 4 A. YOU COULD ALSO TYPE IN QUESTION MARK ON THE COMMAND LINE,

04:13:05 5 AND THE TOPS 20 CLI WOULD DISPLAY HELP INFORMATION.

04:13:09 6 Q. AND YOU REMEMBER USING THESE FEATURES BACK IN 1981 OR 1982

04:13:14 7 TIME PERIOD?

04:13:14 8 A. I DID.

04:13:15 9 Q. WHEN YOU FIRST USED THE CISCO IOS CLI, I GUESS THIS WAS IN

04:13:23 10 THE LATE 80'S, MR. LI, DID YOU NOTICE ANY SIMILARITIES BETWEEN

04:13:26 11 HOW IT WORKED AND HOW THE TOPS 20 CLI FUNCTIONED?

04:13:29 12 A. THERE WERE MANY SIMILARITIES.

04:13:30 13 Q. WHAT WERE THOSE SIMILARITIES BETWEEN THE DEC TOPS 20 CLI

04:13:34 14 AND THE CISCO IOS CLI?

04:13:36 15 A. MANY OF THE HELP FUNCTIONS WERE MODELLED DIRECTLY AFTER

04:13:40 16 WHAT WAS ON TOPS 20, IT LOOKED ALMOST IDENTICAL.

04:13:44 17 Q. WHAT OTHER SIMILARITIES WERE THERE BETWEEN THE TOPS 20 CLI

04:13:47 18 AND THE CISCO IOS CLI?

04:13:50 19 A. THE OVERALL COMMAND SYNTAX WAS VERY SIMILAR. AGAIN, USING

04:13:55 20 THE VERB OBJECT THEN OPTIONS FORMAT.

04:13:58 21 Q. ANY OTHER SIMILARITIES THAT YOU CAN RECALL BETWEEN THE DEC

04:14:03 22 TOPS 20 CLI AND THE CISCO IOS CLI?

04:14:07 23 A. THOSE ARE THE PRIMARY ONES.

04:14:10 24 Q. OKAY. AND MR. LI, DO YOU KNOW WHY THOSE SIMILARITIES

04:14:13 25 EXISTED BETWEEN THE CISCO IOS CLI AND THE TOPS 20 CLI?

04:14:18 1 A. MANY PEOPLE WORKING ON CISCO IOS WERE FANS OF THE TOPS 20  
04:14:23 2 OPERATING SYSTEM. I BELIEVE LEN BOSACK, THE FOUNDER OF CISCO,  
04:14:28 3 HAD ALREADY WORKED AT DEC AND WAS PART OF THE HARDWARE TEAM  
04:14:32 4 DESIGNING THAT HARDWARE FOR DEC.

04:14:37 5 MR. VAN NEST: WOULD YOU ASK THAT AGAIN. I THINK  
04:14:39 6 SOMEONE COUGHED.

04:14:41 7 MR. WONG: I'M SORRY.

04:14:42 8 Q. COULD YOU EXPLAIN AGAIN TO THE JURY, MR. LI, WHY THERE  
04:14:47 9 WERE SIMILARITIES BETWEEN THE CISCO IOS CLI AND THE TOPS 20 CLI  
04:14:51 10 MADE BY DEC?

04:14:52 11 A. THERE WERE MANY PEOPLE AT CISCO WHO WERE FANS OF THE TOPS  
04:14:56 12 20 OPERATING SYSTEM. WE ACTUALLY HAD SEVERAL OF THEM THAT WE  
04:14:59 13 DID DEVELOPMENT ON THERE, AND ALSO I BELIEVE WHEN LEN BOSACK  
04:15:04 14 WAS A MEMBER OF THE DEC TOPS 20 DEVELOPMENT TEAM.

04:15:08 15 Q. AGAIN WHO WAS LEN BOSACK?

04:15:10 16 A. ONE OF THE FOUNDERS AT CISCO.

04:15:15 17 Q. NOW WE HAVE BEEN TALKING ABOUT SOME OF THE COMMAND  
04:15:17 18 SYNTAXES THAT WERE PRESENT IN THE DEC VMS AND THE TOPS 20  
04:15:24 19 CLI'S.

04:15:24 20 TO WHAT EXTENT, IF AT ALL, DID THOSE PRIOR CLI'S SEPARATE  
04:15:29 21 THEIR COMMANDS INTO PRIVILEGED AND NON PRIVILEGED COMMANDS?

04:15:32 22 A. SO ALL OF THESE OPERATING SYSTEMS HAD SEPARATE COMMANDS  
04:15:39 23 THAT REQUIRED SYSTEM ADMINISTRATOR PRIVILEGES TO USE.

04:15:41 24 Q. OKAY. AND WAS THAT TRUE BACK IN 1981 WHEN YOU WERE USING  
04:15:46 25 THESE CLI'S?

04:15:47 1 A. YES.

04:15:47 2 Q. DO YOU RECALL IF THESE CLI'S THAT YOU USED BACK IN THE

04:15:53 3 EARLY 80'S SUPPORTED DIFFERENT MODES FOR THE USER USING THE

04:15:57 4 CLI?

04:15:58 5 A. SOMEWHAT. THE TOPS 20 OPERATING SYSTEM CLI HAD A FEW

04:16:06 6 DIFFERENT MODES THAT THEY WERE NOT COMMON, BUT IF YOU WANTED

04:16:12 7 DETAILED COMMANDS, YOU COULD GET AT THEM THROUGH USING SOME OF

04:16:16 8 THE EMBEDDED MODES, THE DIRECTORY COMMAND, HAD ADDITIONAL

04:16:24 9 MODES.

04:16:24 10 Q. NOW YOU LEFT CISCO, YOU SAID, AFTER YOUR FIRST TIME

04:16:29 11 WORKING THERE IN 1996, CORRECT?

04:16:31 12 A. YES.

04:16:31 13 Q. WHERE DID YOU GO AFTER YOU LEFT CISCO?

04:16:33 14 A. JUNIPER NETWORKS.

04:16:35 15 Q. AND WHAT WAS THE PRODUCT THAT JUNIPER NETWORKS WAS

04:16:41 16 BUILDING OR SELLING?

04:16:42 17 A. THEY WERE BUILDING ANOTHER ROUTER THAT BECAME THE M40.

04:16:46 18 Q. AND DID THE M40 ROUTER AT JUNIPER, WAS THAT A COMPETING

04:16:50 19 PRODUCT TO A CISCO ROUTER?

04:16:51 20 A. IT WAS.

04:16:52 21 Q. AND HOW LONG DID YOU WORK AT JUNIPER?

04:16:56 22 A. I WAS THERE FOR THREE YEARS.

04:16:58 23 Q. SO IS THAT APPROXIMATELY 1996 TO '99?

04:17:02 24 A. YES.

04:17:02 25 Q. DID THE JUNIPER ROUTER THAT YOU WORKED ON, DID IT HAVE AN

04:17:07 1 OPERATING SYSTEM?

04:17:08 2 A. IT DID.

04:17:08 3 Q. DID IT HAVE A NAME?

04:17:10 4 A. JUNOS.

04:17:10 5 Q. JUNOS. THANK YOU.

04:17:12 6 AND DID THE JUNOS OPERATING SYSTEM HAVE A COMMAND-LINE

04:17:16 7 INTERFACE?

04:17:16 8 A. IT DID.

04:17:17 9 Q. OKAY. AND BY THE WAY, MR. LI, WHEN YOU JOINED JUNIPER,

04:17:23 10 HOW MANY EMPLOYEES DID JUNIPER HAVE?

04:17:25 11 A. I WAS EMPLOYEE NUMBER FIVE, AND THAT INCLUDED THE THREE

04:17:30 12 FOUNDERS.

04:17:31 13 Q. DID YOU WORK AT ALL ON THE CLI AT JUNIPER?

04:17:34 14 A. I CONTRIBUTED MARGINALLY. MY FRIEND, PAUL TRAINOR WAS ONE

04:17:41 15 OF THE PRIMARY ENGINEERS WORKING ON THAT, AND I ADVISED HIM.

04:17:45 16 Q. THANK YOU.

04:17:45 17 WERE YOU AWARE OF AS TO HOW THE JUNIPER CLI WAS DESIGNED?

04:17:51 18 A. I WAS.

04:17:52 19 Q. OKAY. WERE THERE ANY OPERATIONAL DIFFERENCES BETWEEN THE

04:17:57 20 JUNIPER JUNOS CLI AND THE CISCO IOS CLI?

04:18:01 21 A. THERE WERE MANY.

04:18:02 22 Q. CAN YOU DESCRIBE SOME OF THOSE OPERATIONAL DIFFERENCES

04:18:06 23 BETWEEN THE JUNOS CLI AND THE CISCO IOS CLI?

04:18:10 24 A. THE PRIMARY DIFFERENCE THAT IS ACTUALLY DIFFICULT, IT'S

04:18:15 25 VERY DIFFERENT TO WORK WITH, IS THE JUNOS CLI IS STRICTLY

04:18:20 1 HIERARCHICAL, RATHER THAN HAVING SOME MODES THAT WERE NOT  
04:18:25 2 SYNTACTICALLY APPARENT, THE JUNOS CLI MADE THOSE SUBSYSTEMS  
04:18:30 3 VERY CLEAR IN THE SYNTACTIC MARKERS.  
04:18:35 4 Q. AND WHAT DID THOSE SYNTACTIC MARKERS LOOK LIKE?  
04:18:38 5 A. THOSE WERE CODE BRACES.  
04:18:40 6 Q. SO DID THOSE OPERATIONAL DIFFERENCES BETWEEN THE JUNIPER  
04:18:43 7 JUNOS CLI AND THE CISCO IOS CLI IMPACT THE SYNTAX OF THE JUNOS  
04:18:47 8 CLI COMMANDS?  
04:18:49 9 A. IT SIMPLIFIED THE JUNOS ONES, IT AVOIDED MANY OF THE  
04:18:53 10 DIFFICULTIES THAT WE HAD WITH IOS PARSING.  
04:18:55 11 Q. NOW DESPITE THE OPERATIONAL DIFFERENCES BETWEEN THE JUNOS  
04:19:03 12 CLI AND THE IOS CLI, DID THE JUNOS CLI COMMANDS USE TERMS FROM  
04:19:07 13 INDUSTRY STANDARDS?  
04:19:07 14 A. IT USED MANY.  
04:19:08 15 Q. AND WHY DID THE JUNOS CLI USE TERMS FROM INDUSTRY  
04:19:13 16 STANDARDS?  
04:19:13 17 A. IT WAS IMPORTANT THAT WE HAVE A PRODUCT THAT WAS  
04:19:17 18 CONVENIENT AND WELL KNOWN TO THE EXISTING CUSTOMER BASE.  
04:19:25 19 Q. NOW YOU LEFT JUNIPER IN 1999, CORRECT?  
04:19:29 20 A. I DID.  
04:19:29 21 Q. AFTER YOU LEFT JUNIPER, WHERE DID YOU WORK NEXT, MR. LI?  
04:19:33 22 A. I WAS A COFOUNDER OF PROCKET NETWORKS.  
04:19:35 23 Q. AND WHAT WAS YOUR POSITION AT PROCKET NETWORKS, BESIDES  
04:19:38 24 COFOUNDER?  
04:19:39 25 A. I WAS ALSO THE DIRECTOR OF SOFTWARE ENGINEERING AND CHIEF

04:19:42 1 SCIENTIST.

04:19:43 2 Q. AND THAT WAS IN 1999, AROUND THERE?

04:19:46 3 A. YES.

04:19:47 4 Q. AND WHAT WAS THE PRODUCT THAT YOU WERE WORKING ON AT

04:19:51 5 PROCKET NETWORKS?

04:19:52 6 A. WE WERE DEVELOPING ANOTHER CORE ROUTER, TWO MODELS, THE

04:19:58 7 8812 AND THE 8801.

04:19:59 8 Q. AND DID THE 8812 AND 8801 ROUTER FROM PROCKET NETWORKS WAS

04:20:08 9 THAT A COMPETING PRODUCT TO CISCO'S ROUTERS?

04:20:11 10 A. AND JUNIPER'S.

04:20:12 11 Q. DID THE PROCKET NETWORKS ROUTER THAT YOU WERE DEVELOPING

04:20:18 12 OR DEVELOPED HAVE A COMMAND-LINE INTERFACE?

04:20:20 13 A. IT DID.

04:20:20 14 Q. AND WHAT WAS YOUR ROLE, MR. LI, IN THE DEVELOPMENT OF THE

04:20:26 15 CLI ON THE PROCKET NETWORKS ROUTER?

04:20:29 16 A. SO MY ROLE AS DIRECTOR OF SOFTWARE OF ENGINEERING WAS TO

04:20:32 17 LEAD THE TEAM THAT WAS DEVELOPING THAT ENTIRE CLI.

04:20:36 18 I SET THE DIRECTION AND SPECIFICALLY REQUESTED TO THAT

04:20:39 19 TEAM THAT THEY BUILD THE CLI THAT EMULATED CISCO'S IOS.

04:20:45 20 Q. AND WHEN YOU SAY "EMULATED CISCO IOS," WHAT DO YOU MEAN BY

04:20:50 21 THAT?

04:20:50 22 A. WE USED MANY OF THE SAME SYNTACTICAL TERMS. WE WERE

04:20:55 23 TRYING TO ACHIEVE BUG-FOR-BUG COMPATIBLE WITH CISCO IOS.

04:21:00 24 Q. AND WHEN WAS THAT DECISION MADE AT PROCKET NETWORKS TO

04:21:03 25 EMULATE THE CISCO CLI DOWN TO THE BUGS?

04:21:05 1 A. APPROXIMATELY 1999.

04:21:08 2 Q. AND DID PROCKET NETWORKS CARRY OUT THAT DECISION WHEN IT

04:21:16 3 DESIGNED ITS CLI?

04:21:16 4 A. WE DID.

04:21:17 5 Q. TO WHAT EXTENT, IF AT ALL, WAS COMPATIBILITY A

04:21:23 6 CONSIDERATION WHEN PROCKET NETWORKS DECIDED TO MIMIC THE CISCO

04:21:28 7 IOS CLI?

04:21:30 8 A. COMPATIBILITY WAS OUR FOREMOST CONSIDERATION. WE WANTED

04:21:34 9 OUR ROUTER TO BE AS COMPATIBLE WITH OPERATIONAL REQUIREMENTS AS

04:21:39 10 WE COULD FOR THE CISCO INSTALLED BASE.

04:21:43 11 Q. TO WHAT EXTENT, IF AT ALL, DID THE PROCKET NETWORKS'S CLI

04:21:51 12 TRY TO MIMIC THE CLI COMMAND SET SUPPORTED BY CISCO IOS CLI?

04:21:55 13 A. WE TRIED TO INstantiate AS MANY OF THE CISCO IOS COMMANDS

04:21:59 14 AS WERE RELEVANT TO OUR FUNCTIONAL BASIS OF OUR OPERATING

04:22:05 15 SYSTEM.

04:22:05 16 Q. AND WHEN YOU SAY "INstantiate," DO YOU MEAN -- WHAT DO YOU

04:22:09 17 MEAN BY THAT?

04:22:09 18 A. TRY TO DEVELOP THE SAME COMMANDS, AS MANY AS POSSIBLE.

04:22:13 19 Q. AND WHEN YOU SAY THE "SAME COMMANDS," DO YOU MEAN THE SAME

04:22:17 20 WORDS IN THE SAME ORDER?

04:22:18 21 A. THE SAME WORDS USING THE EXACT SAME SYNTAX.

04:22:22 22 Q. TO WHAT EXTENT, IF AT ALL, DID THE PROCKET NETWORK'S CLI

04:22:27 23 TRY TO MIMIC THE COMMAND RESPONSES AND OUTPUTS FOR THE CISCO

04:22:31 24 IOS CLI?

04:22:32 25 A. THAT WAS A LITTLE MORE DIFFICULT. WE DID WHAT WE COULD TO

04:22:36 1 BE SIMILAR, BUT WE COULD NOT BE EXACTLY LITERAL.

04:22:41 2 Q. AND WHAT ABOUT THE CISCO IOS CLI MODES AND PROMPTS, DID

04:22:45 3 THE PROCKET NETWORK'S CLI TRY TO EMULATE THOSE MODES AND

04:22:50 4 PROMPTS?

04:22:50 5 A. YES, WE TRIED TO DO THAT. MANY CUSTOMERS HAD PROGRAMS

04:22:54 6 THAT DEPENDED ON THOSE MODES AND PROMPTS, AND WE WANTED TO

04:22:58 7 INTERACT WITH THOSE AS SEAMLESSLY AS POSSIBLE.

04:23:03 8 Q. WHAT ABOUT TYPOGRAPHICAL ERRORS THAT MIGHT HAVE EXISTED

04:23:06 9 WITHIN THE CISCO IOS CLI. DID PROCKET NETWORKS TRY TO MIMIC

04:23:09 10 THOSE ERRORS AS WELL?

04:23:10 11 A. AS FAR AS I KNOW, WE TRIED TO FIX THOSE.

04:23:13 12 Q. OKAY. WHEN YOU SAID BUG-FOR-BUG COMPATIBLE EARLIER IN

04:23:17 13 YOUR TESTIMONY, WHAT DID YOU MEAN BY THAT?

04:23:19 14 A. THERE WERE SEVERAL FUNCTIONS WITHIN CISCO IOS THAT WE FELT

04:23:24 15 WERE INAPPROPRIATE OR INCORRECT, AND THERE WERE STRONG ENGINEER

04:23:28 16 ARGUMENTS THAT WE SHOULD HAVE A DIFFERENT BEHAVIOR.

04:23:31 17 WE CHOSE TO EMULATE THE CISCO'S BEHAVIOR FOR THOSE

04:23:35 18 FUNCTIONS RATHER THAN DO WHAT WE FELT WAS ACTUALLY A BETTER

04:23:39 19 IMPLEMENTATION.

04:23:39 20 Q. AND WHY WAS THE DECISION MADE TO ACTUALLY KEEP THE BUGS

04:23:43 21 FROM THE CISCO IOS CLI IN THE PROCKET NETWORK'S CLI?

04:23:47 22 A. CHANGING OUR BEHAVIOR WOULD HAVE MADE US INCOMPATIBLE WITH

04:23:53 23 THE CISCO INSTALL BASE AND WOULD HAVE CAUSED THE CUSTOMERS

04:23:56 24 GREATER DIFFICULTY.

04:23:57 25 Q. DID YOU BELIEVE AT THE TIME THAT YOU ARE WERE WORKING AT

04:23:59 1 PROCKET NETWORKS, MR. LI, THAT IT WAS OKAY TO EMULATE THE CISCO  
04:24:04 2 CLI?

04:24:04 3 A. YES, WE BELIEVED SO.

04:24:06 4 Q. AND WHY DID YOU BELIEVE IT WAS OKAY FOR PROCKET NETWORKS  
04:24:10 5 TO EMULATE THE CISCO CLI, INCLUDING THE COMMANDS AND THE MODES  
04:24:14 6 AND PROMPTS?

04:24:14 7 A. WE HAD ONE MEMBER FROM CISCO ON OUR BOARD WHO KNEW WHAT WE  
04:24:19 8 WERE DOING, HAD RAISED NO OBJECTION, AND THEN WE ALSO HAD AN  
04:24:23 9 EXAMPLE FROM FOUNDRY NETWORKS, WHO WAS ALSO EMULATING THE FULL  
04:24:27 10 CISCO COMMAND SET, AND WE HAD HEARD NOTHING FROM THEM ABOUT ANY  
04:24:31 11 DIFFICULTIES.

04:24:32 12 Q. WHY DID PROCKET NETWORKS CHOOSE TO EMULATE THE CISCO IOS  
04:24:40 13 CLI AS OPPOSED TO THE JUNOS CLI THAT WAS USED BY JUNIPER?

04:24:45 14 A. AT THE TIME, CISCO HAD ABOUT 99 PERCENT MARKET SHARE.

04:24:49 15 Q. DID PROCKET NETWORKS EVER ASK ANYONE AT CISCO FOR  
04:24:57 16 PERMISSION TO USE THE SAME COMMANDS THAT WERE IN THE IOS CLI?

04:25:03 17 A. WE DID NOT.

04:25:04 18 Q. AND WHY NOT, MR. LI?

04:25:06 19 A. WE FELT THAT BECAUSE FOUNDRY WAS NOT BEING PURSUED, THAT  
04:25:10 20 WE WOULD NOT BE PURSUED EITHER. THAT WE WERE NOT ACTUALLY  
04:25:16 21 INFRINGING ON CISCO'S INTELLECTUAL PROPERTY. THE CONCEPTS  
04:25:20 22 BEHIND THE COMMANDS WERE FAR MORE IMPORTANT THAN THE COMMANDS  
04:25:25 23 THEMSELVES.

04:25:26 24 Q. AND HOW LONG WERE YOU WORKING AT PROCKET NETWORKS, MR. LI?

04:25:29 25 A. FIVE YEARS.

04:25:30 1 Q. DURING THAT ENTIRE TIME PERIOD, DID YOU HEAR ANY OBJECTION  
04:25:33 2 FROM CISCO TO PROCKET NETWORKS'S USE OF THE CISCO CLI?  
04:25:37 3 A. NO, NONE AT ALL.  
04:25:39 4 Q. AND DURING THAT FIVE-YEAR TIME PERIOD, MR. LI, DID PROCKET  
04:25:45 5 NETWORKS DO ANYTHING TO TRY TO HIDE THE FACT THAT IT WAS USING  
04:25:47 6 MANY OF THE SAME COMMANDS, MODES AND PROMPTS AS THE CISCO IOS  
04:25:51 7 CLI?  
04:25:52 8 A. ACTUALLY WE ACTIVELY TOUTED THAT TO THE CUSTOMER BASE.  
04:25:55 9 Q. IF YOU OR THE MANAGEMENT OF PROCKET NETWORKS THOUGHT IT  
04:26:06 10 WAS WRONG OR UNETHICAL TO COPY THE CISCO IOS CLI, WOULD YOU  
04:26:09 11 HAVE DONE SO?  
04:26:09 12 A. NO.  
04:26:10 13 Q. MR. LI, DID PROCKET NETWORKS CREATE USER DOCUMENTATION FOR  
04:26:14 14 ITS ROUTER PRODUCTS?  
04:26:16 15 A. EXTENSIVELY.  
04:26:17 16 Q. CAN YOU TAKE A LOOK AT THE BINDERS THAT ARE ON YOUR DESK  
04:26:23 17 PLEASE, OR ON THE STAND. AND TAKE A LOOK, PLEASE, AT THE TAB  
04:26:29 18 MARKED 6652. LET ME KNOW WHEN YOU ARE THERE.  
04:26:35 19 A. I'M THERE.  
04:26:36 20 Q. DO YOU RECOGNIZE THE DOCUMENT BEHIND TAB 6652?  
04:26:39 21 A. I DO.  
04:26:39 22 Q. AND WHAT IS THAT DOCUMENT?  
04:26:40 23 A. THIS IS THE SOFTWARE INSTRUCTION MANUAL.  
04:26:43 24 Q. I'M SORRY, CAN YOU SAY THAT AGAIN?  
04:26:46 25 A. THIS IS THE PROCKET NETWORKS SOFTWARE INTRODUCTION MANUAL.

04:26:50 1 Q. AND HOW DO YOU KNOW THIS IS PROCKET NETWORKS' MANUAL?

04:26:55 2 A. IT HAS THE LOGO ON THE YOU UPPER LEFT-HAND CORNER.

04:26:58 3 Q. WERE YOU INVOLVED IN THE CREATION OF THE PROCKET NETWORKS

04:27:01 4 MANUAL?

04:27:01 5 A. INDIRECTLY, YES.

04:27:02 6 Q. WERE YOU FAMILIAR WITH THE MANUALS AT PROCKET NETWORKS

04:27:04 7 WHEN YOU WORKED THERE?

04:27:05 8 A. I WAS.

04:27:06 9 MR. WONG: YOUR HONOR, I WOULD LIKE TO MOVE TX 6652

04:27:10 10 INTO EVIDENCE.

04:27:10 11 THE COURT: ANY OBJECTION?

04:27:11 12 MR. NELSON: NO OBJECTION, YOUR HONOR.

04:27:12 13 THE COURT: IT WILL BE ADMITTED.

04:27:12 14 (DEFENDANT'S EXHIBIT 6652 WAS ADMITTED INTO EVIDENCE.)

04:27:14 15 BY MR. WONG:

04:27:14 16 Q. AND JUST FOR THE SAKE OF EFFICIENCY, MR. LI, COULD YOU

04:27:17 17 PLEASE LOOK AT THE FOLLOWING DOCUMENTS IN THIS BINDER AND THE

04:27:19 18 NEXT ONE, THOSE WOULD BE 6653, 6654, 6655, AND 6656.

04:27:29 19 AND MY QUESTION TO YOU, MR. LI, AFTER YOU CAN TAKE A LOOK

04:27:32 20 AT THOSE IS, DO YOU ALSO RECOGNIZE THOSE DOCUMENTS AS

04:27:35 21 DOCUMENTATION FROM PROCKET NETWORKS?

04:27:37 22 A. I DO, AND THEY ARE.

04:27:38 23 Q. OKAY.

04:27:40 24 MR. WONG: I WOULD ALSO LIKE TO MOVE TO ADMIT TX

04:27:43 25 6653, 6654, 6655, AND 6656 INTO EVIDENCE.

04:27:49 1 THE COURT: ANY OBJECTION?

04:27:50 2 MR. NELSON: NO OBJECTION.

04:27:51 3 THE COURT: IT WILL ALL BE ADMITTED.

04:27:43 4 (DEFENDANT'S EXHIBIT 6653, 6654, 6655, AND 6656 WERE ADMITTED

04:27:43 5 INTO EVIDENCE.)

04:27:53 6 BY MR. WONG:

04:27:53 7 Q. AND JUST SO THE JURY CAN SEE WHAT ONE OF THESE THINGS

04:27:58 8 LOOKS LIKE, CAN WE PUT UP TX 6654.

04:28:10 9 NOW MR. LI CAN YOU EXPLAIN TO THE JURY WHAT THIS DOCUMENT

04:28:12 10 IS?

04:28:13 11 A. THIS IS A SYSTEM MANAGEMENT AND OPERATIONS MANUAL.

04:28:16 12 Q. AND DO THE PROCKET NETWORKS DOCUMENTATION DESCRIBE THE CLI

04:28:21 13 MODES PROMPTS AND COMMANDS THAT ARE SUPPORTED BY PROCKET'S

04:28:24 14 ROUTER?

04:28:24 15 A. YES.

04:28:25 16 Q. OKAY. CAN WE TURN TO PAGE 45, PLEASE, OF THIS DOCUMENT.

04:28:37 17 NOW MR. LI, WHAT ARE WE SEEING HERE ON THIS PAGE.

04:28:42 18 A. THIS IS THE "SHOW CLOCK" COMMAND.

04:28:44 19 Q. OKAY. AND IS THIS A COMMAND THAT THE PROCKET NETWORKS

04:28:46 20 ROUTER SUPPORTED?

04:28:47 21 A. YES, IT IS.

04:28:48 22 Q. AND BY THE WAY, MR. LI, ARE THESE USER DOCUMENTATIONS, ARE

04:28:52 23 THEY ALL PUBLIC OR WERE THEY ALL PUBLIC?

04:28:54 24 A. THEY WERE AT ONE POINT.

04:28:56 25 Q. OKAY. WE WILL GET TO THAT IN A SECOND.

04:29:00 1 AND TO YOUR KNOWLEDGE, DO YOU KNOW, MR. LI, WHETHER THE  
04:29:04 2 "SHOW CLOCK" COMMAND IS A COMMAND SUPPORTED BY CISCO IOS?  
04:29:08 3 A. I BELIEVE IT'S THAT OR SOMETHING SIMILAR.  
04:29:10 4 Q. OKAY. THANK YOU.  
04:29:15 5 NOW MR. LI, IS PROCKET NETWORKS STILL IN BUSINESS TODAY?  
04:29:18 6 A. NO, IT IS NOT.  
04:29:19 7 Q. WHAT HAPPENED TO PROCKET NETWORKS?  
04:29:20 8 A. IT WAS PURCHASED, IN LARGE PART, BY CISCO SYSTEMS.  
04:29:24 9 Q. AND WHEN DID THAT HAPPEN, MR. LI?  
04:29:28 10 A. 2004.  
04:29:29 11 Q. AND DO YOU KNOW IF THE MANUALS THAT ARE IN YOUR BINDERS,  
04:29:33 12 ARE THOSE THE COMPLETE SET OF PROCKET NETWORKS'S MANUALS?  
04:29:37 13 A. NO, I BELIEVE THAT'S A SMALL SUBSET, ACTUALLY.  
04:29:40 14 Q. DO YOU KNOW WHAT HAPPENED TO THE REST OF THE PROCKET  
04:29:42 15 NETWORKS MANUALS AFTER ITS ASSETS WERE ACQUIRED BY CISCO?  
04:29:47 16 A. SO AFTER ACQUISITION, CISCO REQUESTED THAT ALL MATERIALS  
04:29:50 17 BE DESTROYED.  
04:29:51 18 Q. WOULD IT SURPRISE YOU, MR. LI, THAT IN THIS LIMITED SUBSET  
04:29:54 19 OF MANUALS IN THE TWO BINDERS HERE, THAT THERE ARE OVER 300  
04:29:59 20 COMMANDS THAT OVERLAP WITH CISCO IOS COMMANDS?  
04:30:01 21 A. NO SURPRISE AT ALL.  
04:30:03 22 Q. WOULD YOU EXPECT THERE TO BE HUNDREDS MORE IN THE COMMANDS  
04:30:06 23 THAT ARE NOW MISSING?  
04:30:08 24 A. YES.  
04:30:11 25 Q. AND MR. LI, AFTER YOU LEFT PROCKET -- WELL, WHEN DID YOU

04:30:16 1 LEAVE PROCKET NETWORKS?

04:30:16 2 A. I LEFT IN 2004.

04:30:19 3 Q. AFTER YOU LEFT PROCKET NETWORKS, YOU RETURNED TO CISCO HOW

04:30:21 4 MANY MORE TIMES?

04:30:22 5 A. THREE MORE TIMES.

04:30:23 6 Q. AND MOST RECENTLY YOU WORKED AT CISCO UNTIL ABOUT 2013,

04:30:28 7 CORRECT?

04:30:29 8 A. YES, THAT'S CORRECT.

04:30:30 9 Q. DO YOU KNOW WHAT A CISCO FELLOW IS?

04:30:31 10 A. I DO.

04:30:32 11 Q. WHAT IS A CISCO FELLOW?

04:30:35 12 A. THAT'S A TITLE FOR THE PEOPLE AT THE TOP LEVEL OF THE

04:30:38 13 TECHNICAL TRACK AT CISCO.

04:30:40 14 Q. DID YOU EVER OBTAIN THE TITLE OF CISCO FELLOW WHILE YOU

04:30:44 15 WERE AT CISCO?

04:30:45 16 A. I DID.

04:30:45 17 Q. AND OVER ALL THE YEARS THAT YOU WORKED AT CISCO, AFTER

04:30:52 18 COPYING THE IOS CLI AND USING IT AT PROCKET, DID ANYONE EVER

04:30:58 19 TELL YOU THAT IT WAS WRONG FOR PROCKET NETWORKS TO COPY THE

04:31:01 20 CISCO CLI DOWN TO ITS BUGS?

04:31:03 21 A. NO. I NEVER HEARD ANYONE CLAIM THAT THAT WAS WRONG.

04:31:07 22 Q. THANK YOU, MR. LI.

04:31:11 23 I HAVE NO FURTHER QUESTIONS.

04:31:14 24 THE COURT: MR. NELSON, CROSS-EXAMINATION?

04:31:17 25 MR. NELSON: YES, YOUR HONOR.

04:31:19 1 THE COURT: GO AHEAD.

04:31:20 2 **CROSS-EXAMINATION**

04:31:20 3 BY MR. NELSON:

04:31:37 4 Q. GOOD AFTERNOON, SIR.

04:31:39 5 A. GOOD AFTERNOON.

04:31:39 6 Q. MY NAME IS DAVE NELSON AND I REPRESENT CISCO IN THE CASE.

04:31:45 7 I'M GOING TO ASK YOU A FEW QUESTIONS?

04:31:46 8 A. PLEASE.

04:31:47 9 Q. FIRST OF ALL, I SHOULD GET YOUR TITLE RIGHT. I KNOW YOU

04:31:50 10 HAVE A PH.D., BUT WHAT DO YOU GO BY, MR.? DOCTOR?

04:31:53 11 A. DOCTOR IS FINE.

04:31:54 12 Q. OKAY. I WILL DO THAT, SIR.

04:31:57 13 SO DR. LI THEN, I WANT TO TALK ABOUT PROCKET A LITTLE BIT.

04:32:00 14 SO THAT WAS THE COMPANY THAT YOU MENTIONED EARLIER THAT

04:32:03 15 STARTED ABOUT 1999; RIGHT?

04:32:04 16 A. UH-HUH, YES.

04:32:05 17 Q. AND CISCO WAS AN INVESTOR IN THAT COMPANY YOU MENTIONED?

04:32:12 18 A. YES.

04:32:12 19 Q. SO THEY OWNED PART OF THAT COMPANY, CORRECT?

04:32:14 20 A. YES.

04:32:16 21 Q. AND HAD SOMEBODY SITTING ON THE BOARD, I THINK YOU

04:32:18 22 MENTIONED, RIGHT?

04:32:18 23 A. A BOARD AND SERVER.

04:32:20 24 Q. SO I THINK WHEN YOU WERE TALKING ABOUT THE PROCKET SWITCH,

04:32:23 25 THE PRODUCT THEY HAD THAT YOU SAID THAT YOU COPIED THE COMMANDS

04:32:29 1 THAT WERE RELEVANT TO THE FEATURE SET YOU HAD, ISN'T THAT  
04:32:32 2 RIGHT?  
04:32:32 3 A. THAT'S CORRECT.  
04:32:32 4 Q. SO IN OTHER WORDS, YOU DIDN'T COPY COMMANDS THAT WEREN'T  
04:32:35 5 RELEVANT TO FEATURES YOU DIDN'T HAVE IN THE PRODUCT; RIGHT?  
04:32:38 6 A. YES.  
04:32:38 7 FOR EXAMPLE, SINCE WE DID NOT SUPPORT APPLE TALK, WE DID  
04:32:43 8 NOT IMPLEMENT THE APPLE TALK COMMANDS OUT OF IOS.  
04:32:46 9 Q. RIGHT. IT WOULDN'T MAKE MUCH SENSE TO COPY COMMANDS THAT  
04:32:49 10 DON'T HAVE ANYTHING TO DO WITH THE FEATURES IN YOUR PRODUCTS;  
04:32:54 11 RIGHT?  
04:32:54 12 A. YES.  
04:32:54 13 Q. SO SIR, A COUPLE OF QUESTIONS, SO YOU WERE, JUST TO BE  
04:32:57 14 CLEAR, IN 2004, THEN, WHEN PROCKET, I THINK YOU SAID WENT INTO  
04:33:04 15 RECEIVERSHIP OR SOMETHING LIKE THAT?  
04:33:07 16 A. IN 2004 WHAT HAPPENED, IS CISCO BOUGHT MANY OF THE PRIMARY  
04:33:13 17 ASSETS OF PROCKET, AND THEN PROCKET ITSELF WENT INTO  
04:33:18 18 RECEIVERSHIP, YES.  
04:33:18 19 Q. OKAY. THANKS.  
04:33:19 20 SO THEN 2004, CISCO BOUGHT THE MAJORITY OF THE ASSETS OF  
04:33:24 21 THE COMPANY; RIGHT?  
04:33:25 22 A. UH-HUH.  
04:33:28 23 Q. NOW WERE YOU AWARE, SIR, THAT IN 2003, CISCO HAD FIND A  
04:33:33 24 CASE AGAINST HUAWEI FOR, AMONG OTHER THINGS, COPYING ITS CLI?  
04:33:36 25 A. I WAS NOT AWARE OF THAT.

04:33:38 1 Q. SO YOU DIDN'T KNOW ANYTHING ABOUT THE DETAILS OF THAT  
04:33:40 2 CASE, SIR?

04:33:41 3 A. I DID NOT FOLLOW THAT IN GREAT DETAIL.

04:33:43 4 Q. OKAY. THANK YOU, SIR.

04:33:45 5 I DON'T HAVE ANY FURTHER QUESTIONS FOR YOU.

04:33:47 6 THE COURT: THANK YOU.

04:33:47 7 MR. WONG, DID YOU HAVE ANYTHING ELSE FOR THIS WITNESS?

04:33:50 8 MR. WONG: I DON'T.

04:33:50 9 THE COURT: MAY DR. LI BE EXCUSED?

04:33:52 10 MR. WONG: HE MAY.

04:33:53 11 THE COURT: DR. LI, THANK YOU FOR YOUR TESTIMONY.

04:33:55 12 YOU ARE FREE TO GO.

04:34:06 13 MR. VAN NEST: YOUR HONOR, AT THIS TIME WE PLAN TO  
04:34:07 14 PLAY THE VIDEO TAPE DEPOSITION OF MR. GREG SATZ. AND THE VIDEO  
04:34:12 15 TAPE IS ABOUT 15 MINUTES IN LENGTH.

04:34:15 16 THE COURT: OKAY.

04:34:15 17 MR. SILBERT: SATZ IS S-A-T-Z. AND I WILL GIVE  
04:34:19 18 YOUR HONOR, LATER, THE TIME COUNT. THIS HAS CLIPS FROM BOTH  
04:34:23 19 PARTIES.

04:34:24 20 THE COURT: THANK YOU.

04:34:25 21 MR. VAN NEST: SO WE ARE GOING TO PLAY IT ONCE WITH  
04:34:27 22 EVERYTHING IN IT, AND THEN WE WILL HAVE HEARD FROM MR. SATZ.

04:34:30 23 THE COURT: THAT SOUNDS PERFECT.

04:34:32 24 THANK YOU.

04:34:32 25 **(THE VIDEO DEPOSITION OF GREG SATZ WAS PLAYED INTO THE**

04:36:07 1 **RECORD.)**

04:49:13 2 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE VIDEO

04:49:15 3 FOR MR. SATZ, AND UNFORTUNATELY THIS MAY NOT BE TAKEN AS BAD

04:49:21 4 NEWS, WE MOVED A LITTLE MORE QUICKLY THIS AFTERNOON THAN I

04:49:24 5 THOUGHT, AND I DO NOT HAVE ANY OTHER LIVE WITNESSES. AND AS

04:49:28 6 YOUR HONOR KNOWS --

04:49:29 7 THE COURT: ALL RIGHT. CAN I EXCUSE THE JURY FOR THE

04:49:32 8 DAY?

04:49:32 9 MR. VAN NEST: CAN I MOVE ONE EXHIBIT FOR MR. SATZ,

04:49:35 10 MR. WONG REMINDED ME, INTO EVIDENCE. THAT WOULD BE TX 5146.

04:49:39 11 THAT'S THE ONE EXHIBIT THAT WAS SHOWN TO THE WITNESS

04:49:42 12 DURING THE EXAMINATION.

04:49:43 13 MR. PAK: NO OBJECTION, YOUR HONOR.

04:49:44 14 THE COURT: IT WILL BE ADMITTED.

04:49:45 15 (DEFENDANT'S EXHIBIT 5146 WAS ADMITTED INTO EVIDENCE.)

04:49:45 16 MR. VAN NEST: BUT YES, YOU CAN.

04:49:47 17 THE COURT: ALL RIGHT. LET'S LET THE JURY GO HOME.

04:49:50 18 ALL RIGHT. WE'VE REACHED THE END OF THE COURT DAY.

04:49:52 19 TOMORROW ON TUESDAY, REMEMBER YOU COME AT 10:00. I WILL

04:49:55 20 HAVE MY CRIMINAL CALENDAR FIRST, SO I WILL GET THAT TAKEN CARE

04:49:58 21 OF AND THEN I WILL SEE YOU AT 10:00 AND WE WILL HAVE A FULL DAY

04:50:03 22 AFTER THAT.

04:50:03 23 LEAVE ME YOUR NOTEBOOKS AND YOUR BINDERS AND YOUR BADGES.

04:50:08 24 HAVE A GOOD EVENING AND I WILL SEE YOU TOMORROW.

04:50:20 25 (JURY OUT AT 4:50 P.M.)

04:50:22 1 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

04:50:43 2 MY ONLY ISSUE IS I ACTUALLY HAVE LOST TRACK OF WHAT WE

04:50:47 3 HAVE FOR TOMORROW MORNING. THERE'S ANOTHER DEPOSITION THAT WAS

04:50:51 4 GOING TO BE DELIVERED TO ME, IS THAT RIGHT?

04:50:54 5 MR. VAN NEST: YES. WELL, TWO THINGS.

04:50:57 6 YES, THE GOURLAY DEPOSITION SHOULD BE ON ITS WAY

04:51:02 7 EMINENTLY. I THOUGHT IT HAD BEEN DELIVERED ALREADY.

04:51:04 8 MR. FERRALL: THIS IS HOW EMINENT IT IS.

04:51:06 9 MR. VAN NEST: THERE IT IS.

04:51:07 10 THE COURT: THAT'S GOURLAY. OKAY.

04:51:09 11 MR. VAN NEST: THAT'S GOURLAY. AND I BELIEVE WE HAVE

04:51:15 12 SUBMITTED A NUMBER THAT ARE DUE TO BE PROVIDED NOW THAT HAVE

04:51:25 13 BEEN DELIVERED.

04:51:26 14 SO THE OTHER --

04:51:28 15 THE COURT: THE OTHER DEPOSITIONS, I'M JUST TRYING

04:51:31 16 TO -- WHAT OTHER DEPOSITION? BECAUSE I JUST WANT A LIST OF THE

04:51:36 17 DEPOSITIONS. I THOUGHT I WAS CAUGHT UP THIS MORNING WHEN I DID

04:51:40 18 SATZ AND --

04:51:42 19 MR. VAN NEST: YOU ARE, YOU ARE.

04:51:43 20 THE COURT: OKAY. THAT'S EXCELLENT.

04:51:47 21 MR. VAN NEST: YOU ARE CAUGHT UP.

04:51:49 22 THE COURT: I JUST WANT TO KEEP UP WITH YOU.

04:51:51 23 MR. VAN NEST: YOU ARE CAUGHT UP.

04:51:53 24 THE OTHER ONES WE HAVE IN THIS PACKET OR TO BE HERE

04:51:56 25 SHORTLY ARE GOURLAY, WHICH SHOULD BE THERE, AND KASTEN WE

04:52:01 1 COVERED.

04:52:02 2 THE COURT: WE'VE DONE KASTEN.

04:52:04 3 MR. VAN NEST: PATILL. P-A-T-I-L. CATO, C-A-T-O.

04:52:15 4 VENKATRAMAN, THAT'S V-E-N-K-A-T-R-A-M-A-N, AND MALIK,

04:52:21 5 M-A-L-I-K.

04:52:24 6 AND THAT'S ALL THE DEPOS. AND YOU HAVE EITHER RIGHT NOW

04:52:28 7 OR WILL SHORTLY.

04:52:30 8 THE COURT: IT LOOKS LIKE THAT MAY BE ALL OF THEM.

04:52:33 9 THE CLERK: GOURLAY IS NOT IN HERE. THE OTHERS ARE.

04:52:36 10 MR. VAN NEST: SO THAT'S THE OTHERS, AND GOURLAY WILL

04:52:39 11 BE HERE, I ASSUME, EMINENTLY.

04:52:41 12 MR. SANTACANA: I'M CHECKING ON IT, YOUR HONOR.

04:52:44 13 THE COURT: THANK YOU. I APPRECIATE THAT.

04:52:46 14 MR. VAN NEST: AND THE OTHER THING THAT WE SHOULD

04:52:48 15 NOTE IS THAT MR. SHAFER WILL BE HERE TOMORROW. I DON'T KNOW

04:52:54 16 WHAT TIME.

04:52:56 17 MR. PAK: MY UNDERSTANDING IS EITHER LATE MORNING OR

04:52:58 18 EARLY AFTERNOON, YOUR HONOR.

04:53:00 19 THE COURT: YOU ACCOMMODATE EACH OTHER.

04:53:02 20 MR. VAN NEST: LET ME SAY THIS ALSO BECAUSE I'M

04:53:05 21 TRYING TO AVOID THAT, I HAVE A WITNESS WHO IS ONLY AVAILABLE

04:53:09 22 TOMORROW. HIS NAME IS MIKE VOLPI, HE'S BEEN ON OUR LIST FOR

04:53:12 23 FOREVER, AND I WANT TO PUT HIM ON RIGHT AFTER LUNCH SO I GET

04:53:16 24 HIM DONE. AND I'M HAPPY TO DO MR. SHAFER BEFORE THAT OR AFTER

04:53:20 25 THAT. BUT AS SOON AS I GET THERE, HE'S ONLY HERE TOMORROW.

04:53:24 1 THE COURT: WELL, MR. VAN NEST, YOU ARE OFFERING A  
04:53:28 2 COURTESY TO CISCO, SO I KNOW THEY WILL WORK AROUND YOUR  
04:53:31 3 SCHEDULE.

04:53:31 4 MR. VAN NEST: PERFECT. THANK YOU, YOUR HONOR.

04:53:33 5 MR. PAK: WE WILL DO THAT, YOUR HONOR, OF COURSE.

04:53:35 6 MR. VAN NEST: OF COURSE, OTHERWISE I THINK WE ARE  
04:53:37 7 CAUGHT UP.

04:53:37 8 AND AS TO WHAT'S THERE TOMORROW, I'M SURE THE PARTIES ARE  
04:53:39 9 NARROWING THE OBJECTIONS, AND I'M SURE YOUR HONOR DOESN'T WANT  
04:53:42 10 TO HEAR MUCH ABOUT THAT UNTIL WE GET HERE TOMORROW, AND  
04:53:45 11 HOPEFULLY THERE WON'T BE MANY.

04:53:47 12 THE COURT: THAT'S GREAT.

04:53:49 13 WHAT I WILL PLAN TO DO IS TO READ THE THREE-PAGE BRIEF,  
04:53:52 14 BUT NOTHING ELSE. SO I WILL BE FAMILIAR WITH THE TYPES OF  
04:53:54 15 ISSUES. AND YOU WILL THEN BRING TO ME WHATEVER EXHIBITS MAY  
04:53:58 16 STILL BE IN DISPUTE.

04:53:59 17 MR. VAN NEST: THAT'S GREAT. AND WE SHOULD BE HERE  
04:54:01 18 AT 9:30?

04:54:02 19 THE COURT: YES. YES, 9:30, BECAUSE I'M STARTING AT  
04:54:08 20 8:30 WITH MY CRIMINAL CALENDAR.

04:54:10 21 MR. VAN NEST: WE WILL BE HERE AT 9:30 HOPING THE  
04:54:15 22 JURY WILL BE HERE TO START AT 10:00.

04:54:17 23 THE COURT: OKAY. AND DO YOU HAVE ANY OTHER  
04:54:19 24 HOUSEKEEPING?

04:54:20 25 MR. PAK: NO, YOUR HONOR.

04:54:20 1 I THINK THERE WERE A COUPLE OF ITEMS FROM TODAY AND  
04:54:23 2 YESTERDAY WE WILL FOLLOW UP WITH YOUR HONOR IN THE MORNING.  
04:54:26 3 FOR EXAMPLE, THE MOTIONS TO STRIKE WE TALKED ABOUT AND GET THE  
04:54:30 4 DOCUMENTS LINED UP AND.  
04:54:32 5 THE COURT: THAT SOUNDS GOOD.  
04:54:34 6 MR. VAN NEST: WE WILL PROVIDE, TIFFANY, YOUR HONOR,  
04:54:36 7 WITH THE CUT FROM SATZ, PLAINTIFF TIME, DEFENSE TIME.  
04:54:41 8 THE COURT: DO WE THINK THAT WE ARE ON TRACK TODAY TO  
04:54:45 9 WRAP UP THE PRESENTATION OF EVIDENCE ON FRIDAY?  
04:54:48 10 MR. VAN NEST: YES.  
04:54:50 11 THE COURT: BECAUSE THAT WOULD BE NICE.  
04:54:51 12 MR. VAN NEST: THAT'S MY PLAN. AND IT'S CONSISTENT  
04:54:53 13 WITH -- WE GOT AS FAR TODAY AS I THOUGHT WE WOULD.  
04:54:58 14 MR. PAK: THAT'S CONSISTENT WITH MY UNDERSTANDING AS  
04:55:00 15 WELL, YOUR HONOR.  
04:55:00 16 THE COURT: OKAY. THAT SOUNDS GREAT.  
04:55:02 17 GOOD. ALL RIGHT. THANK YOU ALL.  
04:55:03 18 MR. PAK: THANK YOU, YOUR HONOR.  
04:55:04 19 MR. VAN NEST: THANK YOU, YOUR HONOR.  
04:55:05 20 (THE PROCEEDINGS WERE CONCLUDED AT 4:55 P.M.)  
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4 **CERTIFICATE OF REPORTER**  
5  
6  
7

8 I, THE UNDERSIGNED OFFICIAL COURT  
9 REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
10 THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
11 FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
12 CERTIFY:

13 THAT THE FOREGOING TRANSCRIPT,  
14 CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
15 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
16 SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
17 HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
18 TRANSCRIPTION TO THE BEST OF MY ABILITY.

19  
20  
21  
22

23  
24   
25 SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 12/5/16